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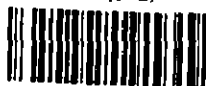
THE VERNMENT OF BRITAIN

by

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FOREWORD

As this book is one of a series, I have not tried to make it quite so comprehensive as its title may suggest it ought to be. Other books in the series will deal with such questions as local government and the working of Parliament, and I have therefore deliberately limited what I have had to say on these topics.

It is a very short book, and it contains expressions of personal opinion, and I have therefore indicated where further information and other opinions can be found.

Subject to these qualifications, the book may be described as an introduction to the working of British government in home affairs. It is not an introduction for people wholly unacquainted with the subject, nor is it a fully documented text-book. It deals with the current working of British government, but it is not garnished with obscure allusions or inside knowledge, nor is it topical in the sense of concentrating solely on what is most recent; although I have tried to be certain that no major developments up to the time of writing have gone unconsidered even if they have had to go undescribed. In any case, my aim has been to set out a plain account of the essential structure of British government as I see it.

I am very grateful to Miss K. Fox and my wife, and to Sir Oliver Franks (Provost of Queen's College); Mr. I. Macdonald, Fellow of Queen's College; Mr. D. N. Chester, Fellow of Nuffield College; and Mr. C. H. Wilson, Fellow of Corpus Christi College. All of these have given me most helpful criticism and advice. None of them, of course, necessarily agrees with any of the views expressed, and faults and errors are entirely my own.

July 1947.

W. H.

P.S.—Writing this sort of book today is like painting the Forth Bridge: before you have finished, it is time to begin again. There have been several developments since this

Foreword was written. I have managed, while correcting proofs, to cope with some of these by altering the text; but in other cases, in order not to delay publication, it has been necessary to proceed by adding footnotes rather than by recasting the text. •

W. H.

February, 1948

CHAPTER I
SOCIETY AND GOVERNMENT
IN BRITAIN

i

THE main business of this book is with Parliament, the Cabinet and the Government Departments; that is, with the central parts of the complex of institutions that we commonly call, for want of a better name, the "machinery of government". But machinery is not, or ought not to be, an end in itself: it should be a means to an end; and machinery of government should serve the social and political ends of a people: it should perform useful functions in an acceptable social and political system. This first chapter, therefore, gives some general consideration to leading features of the British social and political system that are relevant when we seek to understand and to evaluate the machinery of government in Britain. I am afraid that much in this chapter is dogmatic, because I have been trying to compress a lot into a short space; but I have chosen to include it rather than to omit it, because it should at least serve to explain the point of view from which the rest of the book is written; and it seems to me to be essential that in books on political subjects readers should know where they are with their authors.

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BRITISH HISTORY

We cannot understand the society in which we live unless we have considered the course of its history. The course of British history has been in many ways very fortunate for the simple reason that we have had fewer things to differ about than have many other countries. Since the Norman Conquest

we have been free from invasion. The peoples of various origins from whom we are descended merged sufficiently at a relatively early date to make us one society rather than a group of societies. We were loose in cultural ties with the continent, and so moved away from allegiance to the Roman Church more completely and with less upheaval than did some other parts of Western Europe. Since the seventeenth century we have had only minor problems arising from religious differences: our legacy from them has been toleration. We have had no important separatist or minority problems save in regard to Ireland. Broadly speaking, our major internal problems have been confined to the constitutional and social fields, and we have moved smoothly in dealing with these problems.

Constitutional development. In Europe generally, the emergence of the nation-state was accompanied by trends towards absolute monarchy and centralisation of government. In England a powerful aristocracy prevented the growth of any extreme forms of absolutism or centralisation. On the other hand, the association between the greater and lesser gentry and the growth of a powerful commercial class prevented the consolidation of power within a narrow nobility. By the middle of the eighteenth century government was in the hands of a loose association of Whig politicians drawn from various levels of society. The political power of this oligarchy rested on the proscription of the Tory sympathisers with the Stuarts. It was strengthened by its social basis, by the constitutional outcome of the struggle with the Stuarts, and by the grip of the oligarchy on the electoral system and the machinery of government. There was considerable social solidarity between magnates in Parliament and in the localities. The common basis was property, especially in land: the dominant figure was the landlord. The power of government was, according to prevailing theory, exercised through a tripartite balance of Crown, Lords and Commons. In point of fact, Lords and Commons represented the same interests and overshadowed the Crown; and alongside these organs operated the elaborate system of the Common Law and a far-reaching decentralisation of administration to the Justices of the Peace. The machinery of government was an instrument of the Whig

ascendancy. There was no uniform qualification for the parliamentary franchise, but a hodge-podge of different forms of qualification: there was no registration of voters: there was no secret ballot: there were no effective laws to control bribery or corrupt practices at elections. In a large number of constituencies, elections could be, and were, "managed". And offices in the government went by patronage. The whole was a system of interest. The business to be done was relatively simple, and so the system worked. Nor was it essentially repressive. It had elements of paternalism: it admitted the social responsibility, for instance, in the operation of the Poor Law; and at Common Law the poor man, while he might be treated harshly for quite minor offences, had undoubted rights as well as duties.

This system received a series of jolts between the accession of George III in 1760 and the ending of the Napoleonic wars in 1815. A minor constitutional disturbance took place because George III himself sought to follow a more literal interpretation of the powers of the Crown than had been accepted by his two immediate predecessors. The final result of this was to make the limitations upon the power of the Crown more explicit; but a most important effect in the short run was that the monopoly of the Whigs was broken, and a Tory party was re-created. The breaking of the Whig monopoly was accompanied by the development of the notion of legitimate as distinct from merely "factional" opposition—the beginning of the modern notion of "His Majesty's Opposition"—and by greater prominence for the position of the Prime Minister. While these changes were taking place, the American and French Revolutions stimulated radical movements in Great Britain. The later phases of the French Revolution and the long period of the Napoleonic wars provoked repressive measures against radicalism; but simultaneously, as the result of the series of changes which we today call the "Industrial Revolution", new business men demanded reform of the Parliamentary franchise because they wanted a share of political power and the renovation of the machinery of government in order to assist the free movement of industry and commerce, while a new urban working class appeared and an

additional demand for reform of the franchise was formulated in the name of popular government.

In 1832 the first Reform Act admitted to the franchise a relatively small number of what we should today call middle-class voters. It did not introduce the secret ballot: it left the southern and mainly agricultural part of England over-represented as against the new industrial areas of the North: it did not deal with bribery and corruption at elections. But it was none the less of first importance in its effects. Its passage had been accompanied by considerable popular agitation, and the House of Commons was thus fortified in a completely new way against both the Crown and the House of Lords. A more intimate relation also began to obtain between the process of election and the composition of the House of Commons; because, while bribery and corruption continued, the size of constituencies now made elections less easy to manage. The Act further introduced the registration of voters, and those who wished to influence elections now had to encourage their supporters to become enrolled and to argue about the validity of the registrations of supporters of their opponents: both tasks encouraged the development of party organisations in the constituencies.

The next phase was a coalescence of party views on the question of the franchise. Under Peel, the Tories who had opposed the Reform in 1832 came to accept it, while the Whigs, by whom the Reform had been passed, now came to regard it as final. From united opposition to further reform the parties then passed to competing for the support of a wider electorate. The second extension of the franchise was passed by Disraeli in 1867 in the form of a measure more far-reaching than one he had not long before opposed when it was sponsored by Gladstone. The 1867 extension admitted many more new voters than had the 1832 extension, and it was followed very soon by the introduction of the secret ballot. With an Act of 1883 which finally tightened the law of corrupt practice, the third extension of the franchise in 1884, and a very large redistribution of seats in 1885 which ended the preponderance of the southern constituencies, the system of election assumed more or less its modern form. Universal adult suffrage was

finally attained in two subsequent stages in 1918 and 1928, but the general principles of the system had been established by the 1880s.

These developments were accompanied by changes inside Parliament. The growth of party organisation enhanced the importance of the Cabinet. Even in the decade immediately following 1832 there was a marked popularising of politics. After 1867 came the establishing of the modern national organisations of the Liberal and Conservative Parties, and the emergence of the General Election as a choice by the electorate of the party that should form a Government. These changes in turn influenced the relations between Crown and Cabinet, Cabinet and Commons, and Lords and Commons. The monarch was able to exercise less and less control of the Cabinet. Cabinets were able more and more to dominate the House of Commons. The assertion of authority by the House of Lords over the House of Commons became a more and more questionable practice, until, in 1911, the powers of the House of Lords in relation to the Commons were limited in the Parliament Act.

At the same time the range of government work increased. This caused further changes in the machinery of government and was an additional and separate cause of the increasing power of the Cabinet. In 1834 the Poor Law Amendment Act in its own way made as revolutionary a change as had the 1832 franchise reform Act. The Poor Law had been one of the most important parts of the administrative province of the Justices of the Peace. Now the character of decentralisation began to alter, for the 1834 Act removed the Poor Law from the unsupervised control of the Justices and placed it in the hands of new local boards, and it further placed these boards under the supervision of a central authority with an inspectorate and powers of rule-making. Thus there was inaugurated a new phase in the conception of the responsibilities, scope and methods of central government. In the system of local government that slowly came into being it was quickly clear that the national government would dominate. Such steps also played their parts in changing the notion of the functions of Parliament. With more business to be done, pressure on the time of

the House of Commons became greater, its rules of procedure had to be revised to permit of more control by the Cabinet, and the House as such could concern itself less and less with the details of legislation and administration. The effects of this interplay of forces were cumulative.

In 1870 recruitment to the Civil Service was placed on the basis of open competition by examination, and the professional administrator began to replace the amateur. The Cabinet acquired secretarial organisation during the 1914-18 war. The number of ministerial departments increased and this was accompanied by an increase in the size of the Cabinet. The substance of legislation became more and more technical, and the strain of business on the House of Commons greater and greater. More use was therefore made of the practice of delegating powers to the administrative departments to amplify legislation by means of rules or orders.

Social Development. The increase of business and the change in the working of government were both related to the development of an undoctinaire collectivism. This had diverse origins. Some of the social legislation of the early nineteenth century was the work of humanitarian evangelicals. Some of it was the work of utilitarians. Party lines on social and economic questions were by no means clear. The Corn Laws that had protected the Tory landed interest were repealed by Tories. Ultra-Radicals and Ultra-Tories joined to attack the operation of the utilitarian reform of the Poor Law. After 1867, the parties tended to court the increasing working-class electorate, and radicalism on the Liberal flank was countered by Tory Democracy. The extent to which both of the nineteenth-century parties carried reforms, moreover, and the extent to which the Trade Union movement had developed while they were doing so, helps to explain why a separate Labour Party appeared relatively late, and why, when it did, it differed in character from the socialist parties of the continent. It did not arise in order to demand reforms unheard-of hitherto, but to build on the basis of reforms already achieved. Hence the Fabian Society, preaching evolution, was a greater influence on the new party than was the (Marxist) Social-Democratic-Federation. The later contest between the

Conservative and Labour Parties continued to operate in terms of politics of compromise. Even the General Strike of 1926 could not be described as a really major social crisis. After 1931 only a minority of the members of the Labour Party doubted whether, if a Labour majority ever had to form a Government, the Conservatives would loyally accept the verdict of the country. Conservative and Labour politicians have not differed on the fundamental principles of such questions as National Insurance. The controversy raised by the action of the Labour Government of 1945 in reversing the provisions of the 1927 Trades Disputes Act illustrates how rare a thing it is for a Government of one party to undo the legislation of a Government of another party. So, layer by layer, by contributions first from one Government and next from another, we have passed imperceptibly from the *laissez-faire* of the early nineteenth century (itself almost as much a myth as a fact outside the economic field) to the building up of collective controls and services; through factory welfare and public health to education and workmen's compensation, municipal enterprise, national insurance and pensions, the co-ordination and control of marketing, and, most recently, to the beginnings of national control of basic industries.

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THE CHARACTER OF BRITISH SOCIETY

The developments we have just considered have had two main consequences. Because changing alliances of interests have permitted the redistribution of power within a relatively unchanging constitutional framework, the British have been enabled to be unconcerned about the forms of institutions and to be ready to compromise about social and political ends.

The British political system is now supposed to be a democracy, yet it retains a monarchy and an unrepresentative House of Lords. Its House of Commons is supposed to be representative, yet it is chosen by a system of election that permits a constituency to be represented by a member for

whom only a minority of those polling in the constituency have cast their votes. The system further abounds in procedure and offices whose names afford no clues to their real nature. This political system is tolerated because we have come to believe that institutions that can continue to function through out momentous changes show a flexibility that seems well worth preserving. Adaptation rather than invention has therefore become our rule. What matters in our institutions is not what they look like to strangers but what we know they do.

At the same time we have come to approve of being neither capitalist nor socialist in our economic structure. It is inaccurate to speak of the developments we have considered as a transition from capitalism towards socialism. The phrases of political debate are confusing and misleading and narrow our view artificially. It is doubtful whether we ever were a capitalist society in any sense of the expression that would bear close scrutiny, and it is equally doubtful whether any political group in this country is concerned to achieve some quintessentially pure form of socialism. Nor is it more accurate to speak simply in terms of public enterprise ousting private enterprise. Whatever ousting may have taken place, public enterprise has undertaken some functions that were never undertaken and never could have been undertaken by private enterprise, and the economic field is not the only field in which individuals can be enterprising. It will be nearer the truth if we say that we have developed and put into practice certain ideas of collective or public responsibility without denying the reality and value of individual responsibility.

This is not to suggest that political parties have not really differed about anything. They have differed about many things all the time. But they have always differed more over short than over long periods. Each has sought to modify rather than to overturn the positions laid down by the other, and in the result almost all the fields of government and social policy show the handiwork of more than one party. This is one way in which compromise on social and political ends has entered our social and political life. Such compromise is further shown in the way in which the parties have normally tolerated one another, and perhaps even more in the way in which the public

has tolerated the parties. The system has not operated on the basis of everyone insisting on maximum demands or refusing to co-operate. We do not wish to excommunicate one another: we would rather sacrifice something of what we want and hold the community together than insist on what we want to the point of disrupting the community. We do this, I think, because we are used to being a community and have found that we got on very well by these methods.

These are good features. The use of force has been reduced to a minimum, because while the majority principle has been followed it has not been allowed to degenerate into majority tyranny. The representative principle has operated in a manner designed to satisfy the individual's sense of justice, because power has been granted only in company with responsibility, the people have judged whether responsibility has been faithfully and consistently carried out, and they have been in a position to exercise such judgment because the machinery of government has been open to inspection. By these means the British people have contrived to maintain, without any sense of paradox, two attitudes not obviously complementary at first sight—a desire to have their private lives interfered with as little as possible by politics, and a readiness to admit collective responsibilities.

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DANGERS

These are the benefits of the system, but they carry some dangers with them. Politics of compromise are subtle, and those who engage in them must be alert and shrewd. British institutions operate subtly and are misunderstood if viewed crudely. If the political system is attacked, or if it is operating under strain, more than minimum efforts to understand and to act are called for from individual members of the public; for a complex political system is easy to misrepresent, and no political system can overcome obstacles save through the actions of individual men and women.

Two kinds of attack are made, each resting on a distortion, in one case of the nature of the social facts, in the other of the purpose of the political system. The first maintains that the politics of compromise are a sham, or that they are an impossibility. The second refuses to countenance development in the terms of compromise.

The first attack rests on the consideration that collectivism is far from complete and that some people have resisted its advances very strongly. From this point of view it is held that it is idle to speak as though the British shared some common life and heritage. In spite of taxation, money still makes a very great difference to the kind of life a person leads and the kinds of traditions to which he has access: Press barons, farm labourers, Harley Street specialists and coal-miners, it is said, do not form one community; they need sorting out into sub-communities, or classes, and not all of these sub-communities or classes are ready to co-operate: what is collective interest to one man may be sinister interest to another. The argument may then branch off into one of two forms. It may be maintained that the real power does not lie with the British people or with their nominal governors, but with a hidden oligarchy controlling key positions and capable of calling a halt to government policies to which they are opposed. Or it may be maintained that while compromise and give and take were possible in the nineteenth century when parties did not differ on vital issues, the present issues of politics mean that the system has reached a point of tension at which it may shortly be expected to break down.

The second attack rests on quite different considerations. It apparently accepts the notion of politics of compromise, because it emphasises the impropriety of the equation of partisan with national interest. But it proceeds from this position to one of opposition to certain forms of extension of social control on the ground that such extensions can never be of national and can only be of partisan interest.

The first attack rests upon a distortion of social facts. Of course Great Britain, like every other country, has its share of jobbery, corruption, wire-pulling and scheming; and there are people who do not accept the social and political system:

they include tramps, criminals and lunatics, and range through various levels of squalor, squalidness and shadiness, to fanatical defenders of vested interests and extremist politicians. But these people do not include the majority of ordinary British men and women, nor do they include the majority of politicians, public servants or leaders of organised groups such as the Trade Unions, Trade Associations and Churches. The enemies of the people are outside the majority, and do not control it. They may in part infect it; some of them can, no doubt, wield undue influence; their existence is a threat, and if there is progress, it is in spite of them. But the British people are not governed by them. Not all or anything like the greater part of their nominal leaders are fools or hypocrites, nor are their laws and institutions sham. If, indeed, there were real rulers who were different from the nominal rulers, they would have minds of preposterous complexity if they conceived it necessary to maintain the politics of compromise. To say that they need it in order to carry the people with them is on the level of arguing that a burglar needs the police so that he will not be molested on his way to burglaries. Equally it is not true that the political system has reached a point at which it may be expected shortly to break down. No sufficiently strong sections of the British public are yet intransigent on any really important issue. The language of defiance should not be taken for readiness to revolt, or the language of compulsion for readiness to repress. There is so far no evidence that either party is really sufficiently opposed to what it takes to be the real intentions of the other party to seek recourse to unconstitutional action. Neither party, indeed, has so inflexible a creed that it is incapable of sponsoring when in office much of what it criticised when out of office. This is not dishonesty: it is no more than a realisation that the average voter is not an extremist on either side but wants the best world the two sides can jointly secure him. Only isolated purists object to this, but they lack political education, because they have not learned that the practical sense of how to make a society work is more important than the ability to hold unswervingly to a prejudice or to a line of theoretical analysis.

The second attack rests upon a misrepresentation of the

purpose of the political system. It is true that a distinction must be drawn between partisan and national ends, but for this very reason no party can claim infallibility in accusing another of ignoring the distinction. The distinction, in any case, is relative and not absolute. National interests do not exist independently: they emerge in the clash of partisan interests. It is politically meaningless to maintain that any particular scheme of social control either is or is not by nature in the national interest. There can be no test of the national interest other than a practical one. The purpose of the political system is to provide fair means of selection amongst rival views of what is in the national interest. It is idle to maintain as though it were an established truth that anything is in the national interest that has not been subjected to this process; and it is subversive of the basis of the system, in implication if not in intention, to suggest that anything that emerges from this process, after due observance of its rules, has been foisted upon a duped nation illegitimately.

These mistaken views are potentially dangerous. The danger in the first lies in the fact that while it is currently untrue, it may, if it becomes sufficiently a matter of belief and agitation, create circumstances in which it becomes true: interests now innocent may then become sinister, and minorities now impotent become their ready helpers. The danger in the second view lies in the possibility of its unscrupulous use to exploit the dissatisfaction of irresponsible individuals who are unable to see through its meretricious metaphysics. These are current dangers. Fixation on Russia is liable to encourage readiness to embrace the first view: fixation on America is liable to encourage readiness to embrace the second view. Discussion of present strains upon the machinery of government is liable, because of these views, to be conducted in such a way as to confuse the practical issues. At the same time, there is a common disinclination to face the mental discipline required in order to think these matters out. I do not say that these are great or imminent dangers. Their force varies from time to time. But they are hampering even when they are least effective; and the present is a time when such hampering can ill be afforded. I call these influences hampering because they can adversely

affect the working of the machinery of government, and the successful working of that machinery is an issue of central importance today; it is essential if we are to emerge from our present straitened circumstances: Government will affect individuals more and more intimately: it will be liable to require more and more positive co-operation from individuals, and will therefore work less effectively if attention is distracted from it and individuals are indifferent to it or entertain distorted or inaccurate views as to its nature. And these, after all, are tendencies to which we are quite sufficiently prone without extra encouragement. After a war it is easy to feel that too much has been demanded in the way of social obligation and that the time has come to reassert the claims of the private life. This increases the common tendency to consider government as an alien leviathan with which contacts are unnecessary save occasionally in filling forms or waiting at counters in unattractive offices. We tend to be content with general notions that appear to suffice for practical purposes in which we can mainly be passive. This common diagnosis is no longer correct. We cannot adhere to such simple positions when our future private lives depend upon the energy and intelligence with which we will assume social responsibilities in the present. The central theme of this book is closely related to this point. It is concerned to show how the working of the machinery of government in Great Britain is dependent upon the sense of community of the British people and upon individual intelligence, initiative and integrity.

CHAPTER II

THE CONSTITUTION

i

THE British Constitution provides the framework of rules within which operate the institutions we are to examine. In discussing the Constitution we are again dealing, but now from a different angle and in somewhat more precise terms, with the question of the essential character of our political system. We are doing so with reference to the more important of the actual principles that are followed in practice by politicians and lawyers. If it were oftener borne in mind that this is what a discussion of the Constitution involves, it would perhaps appear less mysterious than it frequently does. The Constitution is sometimes spoken of as though it meant exactly the same as the political system itself, or as though it were another name for the sum of the various organs of government, lumped together with the electorate and the political parties. The expression is also at times used as though it referred only to the more ancient parts of the government such as the Crown and the House of Lords, and as though the essential character of the Constitution would be lost if any alteration were made in the status of these. In fact, however, the British Constitution is just the same in nature as any other constitution; it is neither a political system as such, nor any selection of the parts of government, but a body of rules indicating the structure and functions of political institutions and the principles governing their operation. This is a matter that can be much more easily appreciated if we look at countries that have "written constitutions"; that is to say, in which there is a certain special document referred to as "The Constitution". Such constitutions openly purport to give comprehensive and unified expression to "fundamental laws"; that is, to laws that are more authoritative than other laws and require for their passage or their alteration certain special law-making processes

that are more difficult and complicated than those involved in ordinary legislation. The Constitution of Great Britain is, however, just as fundamental and just as much a matter of rules as are the written constitutions of the U.S.A., the U.S.S.R., France or Eire.

Of course, in the absence of single and all-important constitutional document in Great Britain, and in the absence *there of any specific and unique process for constitutional amendment*, it is rather more difficult to pin down the rules of the Constitution. This difficulty is, however, only relative: no written constitution ever works without requiring some measure of interpretation and adaptation; and these processes take place, in the countries which have written constitutions, as the results of judgments given in the law-courts and of the agreement of politicians to customs and usages. On the other hand, certain parts of the British Constitution are, as we shall see, contained in Acts of Parliament, and are therefore just as much written as are the fundamental laws contained in specialised constitutional documents. The British Constitution thus really differs from the "written" type of constitution only inasmuch as its written parts do not have the same kind of special origin and are not subject to any special codification. It does not really differ from them in the sense of being completely unwritten any more than they really differ from it in the sense of being completely written. It may be unusual, and even unique, but it is not different in kind from other constitutions, and, above all, it is not in any way mysterious. It has a history. There are definite sources for its rules. It has central principles that can be given firm expression.

ii

Much of the history of the Constitution is to be found in successive modifications of the royal power or "prerogative".¹ Such modifications, even when made by force or threat, have tended to be made in terms of delimitations of the rights of different parts of the government, and therefore at the same

¹ See Appendix A.

time in terms of corresponding duties: and the governed have been held to have rights as well as duties. Thus the process of constitutional development has been two-sided: the greater part of the actual power has been transferred from the Crown to other institutions; but in the process the acquisition of power has been attended by the acceptance of responsibility. The development has also brought about one of the most obvious characters of our Constitution, the divorce between its form and its substance. Governmental power continues to be exercised in the name of the Crown, and this means, literally, only nominally by the monarch. Thus we still have such legal principles as that "the King can do no wrong" in a country that eschews even bureaucracy and in which any man considers himself as good as any other. This is because the operative sources of our constitutional rules lie elsewhere.

iii

One such source has already been indicated—statutory law, or Acts of Parliament. Many important matters are thus regulated; for instance, the franchise in the 1945 Representation of the People Act and certain of the powers of the House of Lords in the 1911 Parliament Act.¹ Acts which deal with such questions do not differ formally from other statutes: they are constitutional because of what they deal with, and for that reason only. Of course some constitutional statutes have come, in the course of time, to be regarded with a certain reverence: this applies, for instance, to Magna Charta, the Petition of Right, the Bill of Rights and the Act of Settlement. Nonetheless, so far as legal form is concerned, the position of such statutes as these is just the same as that of an Act of Parliament for, say, the regulation of herring fisheries: although it is not

¹ Other important constitutional statutes include the various Acts mentioned in the previous chapter that altered the electoral system in the nineteenth century, and the Acts settling the form of the local government system. Further examples will be found in subsequent chapters and many more might have been described had space permitted: for instance, the Habeas Corpus Acts from 1677, the Act of Union (1707), the Riot Act (1714), the Official Secrets Acts (1911-39), the Statute of Westminster (1931).

very likely to occur, all of these Acts could be repealed in the same way by further Acts of Parliament.

A second source of constitutional rules is to be found in the decision of judges on cases heard by them in the law-courts. The enactments of Parliament may be interpreted by the judges. Decisions of judges, too, have developed the laws and customs of the realm which we know as the "common law";¹ and in this field several matters of major constitutional importance are covered, including some aspects of the royal prerogative and certain of the questions relating to the remedies of the subject in respect of illegal actions of public officers.

The customs of the realm contained in the common law have the force of law because they have been recognised in the courts we accept as having the requisite authority for granting such recognition. Another source of constitutional rules is to be found, however, in usages or conventions whose validity cannot be the subject of proceedings in courts of law. Yet these conventions cover some of the most important parts of our political system. They include, for instance, the greater part of the rules that govern the position of the Cabinet and the working of Parliament; and it is they, in particular, that have served to adjust the operation of these central parts of our government to changes in social outlook. They form the part of the Constitution that is most difficult to study, because they are varied in origin: sometimes they are the subjects of explicit agreements, but at other times they develop more as matters of custom: also, they may sometimes undergo developments that are imperceptible to all save a few contemporaries who are intimate with the inner workings of politics. When Bagehot, who was a close and shrewd observer of the working of contemporary politics, wrote his book *The English Constitution*, he was mistaken about the precise rôle of the monarch in the political system of his day, and we today know more about it than he did because we have available letters and memoirs that were not published in his time. There may thus sometimes be a time-lag in exact public knowledge of particular constitutional conventions. But this does not mean that it is impossible to know anything about them. There has always,

¹ See Appendix B.

in recent times, been broad agreement amongst politicians and amongst students of the subject as to the nature of the greater part of the major conventions; and explanations in Parliament, the correspondence or diaries of statesmen and, the published opinions of commentators provide authoritative sources from which we can frame an account of the conventions that is at least approximately correct. Moreover, if there is a dispute of any political importance about the true nature of a particular convention, it is liable to lead to some public discussion and settlement.

Finally, because of the diversity of the other sources of constitutional rules, there has developed the need for systematisation; that is to say, for bringing the variety of rules into definite relation one to another and into some degree of unity by reference to central principles. This work has been done by "Authorities", that is, by commentators whose works have come to be regarded as authoritative because they give correct and exact expression to agreed traditions. In certain cases such writers have provided compendious and detailed accounts of the operation of particular classes of rule: an outstanding example of this type of work is Sir T. Erskine May's *Parliamentary Practice*. But in other cases they have been more concerned with the general principles of the Constitution considered as a whole: a classical example of this type of work is A. V. Dicey's *Law of the Constitution*.

iv

To understand the actual character of the Constitution we require to look for the central principles it embodies. These principles can be expressed in a variety of ways, but it is convenient to summarise them as three: Supremacy of Parliament, Rule of Law, Cabinet Responsibility.

There are two sides to the principle of Parliamentary Supremacy: the first is the rule that the law made by Parliament (that is, Acts of Parliament) always overrides any other law (that is, that Parliament can change the common law or overturn judicial decisions); the second is the rule that the

right to this legislative supremacy resides in Parliament and in Parliament alone. (Thus the royal prerogative may be limited or defined by Act of Parliament, but neither through the royal prerogative nor by any other means can any legal limitation be placed upon Parliament.) As a corollary, the right to impose taxes resides with Parliament alone. Again, Parliament alone has the right to legalize past illegalities.

This is a very formal characteristic of our Constitution, and by itself throws no light on whether it is, for instance, democratic or otherwise. It is none the less important, because it lets us know quite clearly where to look for ultimate legal authority. It should be noticed that when we say "Parliament" in this context we do not mean, as is sometimes meant in other contexts, simply the House of Commons or the two Houses of Parliament together, but the "Crown-in-Parliament"; that is to say, the Crown, the House of Lords and the House of Commons in their capacity as acting together. For it is normally only by the joint action of these three that legislation in Great Britain is possible,¹ as is indicated in the words with which an Act of Parliament opens: "Be it enacted by the King's Most Excellent Majesty, by and with the advice of the Lords Spiritual and Temporal, and Commons in the present Parliament assembled, and by the authority of the same . . ." The supremacy referred to here is, however, legal supremacy only. It inheres in the institutions just described and these are controlled by determinate persons, but the control exercised by these persons is, as we shall see, itself controlled: other constitutional principles are honoured which in practice limit the actual powers of those whose collective legal powers are without limit.

The principle of the Rule of Law throws more light on the concrete character of the Constitution. It is the principle that the ordinary law of the land is of universal application, that there is to be no arbitrary authority, and no divisions into separate systems of law (for instance, into one for officials and another for ordinary citizens); and it carries with it the rule

¹ The reader will see for himself later how far this account requires to be modified in the case of a statute passed under the provisions of the Parliament Act.

that the remedies of the ordinary law will be sufficient for the effective protection of the constitutional rights of ordinary citizens. The conception of the Rule of Law was given classical formulation sixty years ago by one of the commentators previously mentioned, A. V. Dicey. It has since been questioned whether it ever did apply exactly, for instance (as we shall see) in respect of the immunities of the Crown in litigation. It has also been suggested that it is honoured less today than when Dicey was writing, since, for instance, it has become common to create special departmental tribunals outside the ordinary courts. It does, nonetheless, still represent a central characteristic of the Constitution. The ordinary citizen in Great Britain is not liable to be punished, except for breaches of ordinary law; there are no extraordinary tribunals for trying "offences against the State"; no officials or departments have arbitrary power to arrest us; officials in order to perform their duties may have special powers which ordinary citizens do not have, but these are defined by law, and abuses of them are subject to control by the courts; and while there is an increasing amount of delegation of authority to departments and officials, governments still appear to try to ensure that such authority will not be exercised arbitrarily, since they lay down rules for its exercise, and provide for the payment of compensation in cases in which it causes suffering to legitimate private interests.

The significance of the Rule of Law as a legal principle is that it is recognised in the working of the courts of law. (In the same way recognition is also given to the "Rules of Natural Justice": for instance, to the rule that no man should be judge in his own case.) It might be held that the Rule of Law can remain a cardinal principle of the Constitution only so long as Parliament agrees that it should do so. For practical purposes, however, this consideration is less important than the truth that Parliament in fact does choose to do so. To put it another way, Parliamentary supremacy is, in part, only tolerable because the Rule of Law is recognised. Thus the two principles are connected; and they are further connected with the third principle.

I have called the third principle "Cabinet Responsibility". This principle is political in character. Again, while of the

other two principles, one relates specifically to Parliament as such and the other to the position of the individual citizen, this principle by itself links Parliament and citizens, and, by reference to the relation between the two, delimits the essential mode of operation of our form of government.

The Cabinet is the "Executive" part of our government, as distinct from the "Legislative" part, which is Parliament (in the sense of the Crown-in-Parliament). The Executive is not confined, however, simply to the literal execution or carrying-out of the laws made by the Legislature. It supervises that execution (which is mainly in the hands of the government departments), but it also has, as we shall see, the power of initiative in respect of legislation. That is to say, while it cannot itself legislate, it can, and does, choose the issues to be put before Parliament, and, further, it has, most of the time, the power so to influence Parliament, through its control of the House of Commons, as to be able to ensure that what it proposes will in fact pass into law. This is a very considerable concentration of power; much greater, indeed, than would have suited some of the older constitutional theorists, who considered that there should be a "Separation of Powers", because any concentrations in the same hands of the executive and legislative powers must lead to tyranny. Thus, for instance, in the American Constitution the powers of government were carefully separated. "All legislative power herein granted," reads the first section of Article One of that constitution, "shall be vested in a Congress of the United States," and the first section of Article Two continues: "The Executive power shall be vested in a President." In the Cabinet system, however, the executive is in the legislature, and leads it.

But this concentration of authority is offset. In the first place, the Cabinet is responsible to Parliament. It is governed by the doctrine of Collective Responsibility, whereby for all that is agreed in the Cabinet all of its members who do not at once resign are thereafter individually responsible. It must explain itself to Parliament: the Prime Minister or another spokesman must speak for its policies, and time must be allowed for criticism of its policies. Individual ministers can also be questioned about the activities of their departments.

And the Cabinet is in power, and remains there, only in virtue of being able to count upon a majority of the votes in divisions in the House of Commons. But this presses the question a stage further back; for a majority of votes in the House of Commons is obtained only by obtaining a majority of seats at a General Election. At General Elections the people are choosing which of the rival parties shall be returned to power. It is, as a rule, very clear who will be Prime Minister if one party is victorious and who will be if the other party is. To quite a degree, too, the election chooses members of the Cabinet: no-one could doubt in 1945 that if the Labour Party won the election of that year the Cabinet would contain Mr. Bevin and Mr. Morrison, or that, if the Conservative Party won it, it would contain Mr. Eden and Mr. Butler. Moreover, at a General Election a retiring Cabinet is being judged, at least in part, on its previous performance in office; and the leaders of the party that is victorious at the election do not go to Westminster with a completely free hand to behave as they wish: they are tied in various ways and in varying degrees by their own and their party's pronouncements and promises. They are charged by the people with responsibility for carrying on the government of the country at least broadly in a character consistent with their own representations of themselves. They will answer at the next General Election, and the question of responsibility to Parliament will not arise for them if the result of the election is such as to place the trust of the people elsewhere.

These questions of responsibility indicate that the Cabinet is an executive with limited authority. There is a further side to this. The concentration of the powers of government in Great Britain has traditionally stopped short with the executive and the legislature: the judiciary had remained outside. It is true, of course, that the highest court of appeal is one part of the legislature, the House of Lords. It is also true that the ordinary courts have at times been excluded from considering orders made by ministers and that some justiciable issues have been entrusted to administrative tribunals. But there is no confusion between the legislative and judicial functions of the House of Lords, and, to whatever extent the judiciary

may have suffered or be suffering encroachment, there is no question of direct parliamentary or executive interference. Subject to the supremacy of Parliament, the courts remain independent, free from control or influence by the Cabinet.

Cabinet Responsibility thus supplements the juncture already noticed of Parliamentary Supremacy and the Rule of Law. It provides both the practical pattern for the operation of Parliament and the means whereby the citizens, whose liberties Parliament is to respect, may exercise an influence upon Parliament. It is in this way the most fundamental principle of the modern Constitution.

v

Some people think that discussions of the Constitution and of its principles are a waste of time because they have nothing, or very little, to do with practical questions of politics or of the machinery of government. Anyone who takes such a view is making a big and a dangerous mistake. It is important, in the first place, to be clear what the Constitution is, because there have been times when the word has been used to colour political controversy. Some Conservatives have at times implied that they have considered their party to be "constitutional" in some sense in which the Labour Party apparently was not. This is just a confusion of issues. It is doubtful whether the word "constitutional" so used has any meaning at all. It is certainly no more constitutional to oppose attacks on the House of Lords than it is to oppose attacks on the Trade Unions; the use of the Union Jack as an election emblem is neither constitutional nor unconstitutional; whether you are for or against free enterprise or nationalisation gives no indication whether you can be counted upon to act constitutionally. The Constitution is not the property of any one of the political parties; and there have in fact been occasions when some Conservatives have appeared to behave with doubtful constitutional propriety.¹

¹ In opposition to the Liberals, 1906-14. See pp. 71-2 and 75-6 below, and A. B. Keith: *The Constitution of England from Queen Victoria to George VI*, Vol. I, pp. 400-21.—

In the second place, there is considerable point in appreciating just what the central principles of the Constitution are taken to be. We sometimes say, with heat, that a Government, or a department, has "no right" to do this or that. As a rule we do not mean that there is no constitutional right but simply that there is a policy of which we do not approve. Again, it would be advantageous if there were a more general understanding of the extent to which political leaders are agreed on a body of constitutional principles. Time is often wasted in private political debate in arguing points on which no leading politicians would differ. Further, the detailed rules should themselves be better known, because, if they are not, the significance of many mechanisms of government will be misunderstood. For that reason, while the present chapter has been concerned with the general nature of the Constitution and with its central principles, it has said only enough to give some broad perspective, and additional subsidiary principles will be referred to in the chapters that follow.

CHAPTER III

THE CABINET

i

A NEW Government normally comes into being today as the result of a General Election. It is formed when a new Cabinet is formed, and the first step towards the formation of a Cabinet is the choice, nominally by the monarch, of a Prime Minister. If there has just been a General Election, then this choice is predetermined if the electorate has returned a majority of members of a particular party with a definite leader. In most other cases the choice is likely to be indicated by the state of parties in the House of Commons. The next question is that of choosing the other Ministers of the Crown. By convention, it has for long been settled that Ministers should be either peers or members of the House of Commons, but the choice is also affected by legislation: the Ministers of the Crown Act, 1937, limits the numbers of holders of certain offices that may sit in the House of Commons at any one time; and it insists that if all of certain offices are filled, certain of the holders must sit in the House of Lords. The King again appoints the Ministers, but the nomination of them rests with the Prime Minister. How far the Prime Minister will himself exercise a free choice will depend upon his position in relation to his party; but it is safe to say that his choice of one or two of his fellow party leaders must be a foregone conclusion, and that some of them will have a lot to say as to which offices they are willing to fill.

If a Government contrives to keep its majority in the House of Commons, and there are no marked signs of loss of the confidence of the country, it can, under the Parliament Act, remain in office for five years; but there is then bound to be a General Election. In emergency, of course, the supremacy of Parliament enables even this limitation to be overcome; the

very Parliament (elected in 1910) that reduced the life of Parliament to five from seven years by the Parliament Act renewed its own existence and lasted until 1918. The Parliament elected in 1935 also renewed its own existence and lasted until 1945. The circumstances of these two cases were very special, but it is not at all easy to give an example of "normal" circumstances. A coalition government under Mr. Lloyd George lasted from 1918 until October 1922, when the Conservatives revolted against it; Mr. Lloyd George and others resigned and Mr. Bonar Law became Prime Minister. An Election in November 1922 returned a Conservative majority and Mr. Bonar Law was, again Prime Minister. This Conservative Government, lasted (under Mr. Baldwin after May 1923, when Mr. Bonar Law resigned because of ill-health) until November 1923. Then Mr. Baldwin went to the country on the issue of Protection. As a result of this Election the Conservatives were still the strongest party in the House, but were in a minority against the Liberals and the Labour Party combined. Mr. Baldwin met the House but was defeated and resigned on a vote of no confidence early in 1924. Mr. MacDonald followed with another minority Government, and without an Election intervening; his Government lasted until November 1924, and dissolved after a defeat on a minor issue. At the following Election the Conservatives had a majority over the Liberal and Labour Parties combined, and their Government lasted for the full five years, to be succeeded, after the Election of June 1929, by a Labour Government. This Government came to an end in August 1931, when Mr. MacDonald agreed to form a National Government. Another Election was held in October 1931 and gave a majority to the groups supporting the National Government. The Cabinet was then reconstituted. Mr. MacDonald resigned in June 1935 and was succeeded as Prime Minister by Mr. Baldwin. The next General Election was held in November 1935, and was the last before that of 1945.

The end of a Ministry thus may or may not be accompanied by the ending of a Parliament; that is, by a dissolution and a General Election.¹ In some cases the Ministry simply resigns and is at once succeeded by a Ministry formed by the Opposi-

¹ See Appendix C.

tion. Broadly speaking, a Government will resign rather than dissolve when its position is untenable; that is (if Parliament has long to run) because of a defeat and the prospect of continuing defeats, or (if the life of Parliament has nearly come to an end) because it has no positive programme on which to go to the country. Mr. Baldwin's resignation in 1924 was an example of resignation for the first reason; Mr. Balfour's resignation in 1905 was an example of resignation for the second reason. The first reason is commoner and is most likely to occur in the case of a minority Government, dependent, perhaps, upon the favour of a third Party. The second is rare and represents a degree of pessimism to which no Party will willingly sink. Dissolution may come about in various ways. It may follow a defeat deemed to be vital. This was the case with Mr. MacDonald's dissolution of 1924. But in other cases it may not follow defeat. It is usual for a Government that comes into office as a result of the resignation, without dissolution, of the previous Government, itself to ask for early dissolution. This occurred with the National Government in 1931. A Government may also ask for a dissolution in order to put a new issue of importance to the country. Mr. Baldwin's dissolution of 1923 was for the purpose of asking the country for a mandate¹ for protection. Finally, dissolution will be necessary when the life of a Parliament is running out. In this case questions of tactics may arise in relation to the precise timing of the request. Mr. Churchill objected to the suggestions of the Labour Party for the timing of the Election that was held in 1945. In 1935 Mr. Baldwin utilised the occasion of the "Peace Ballot" in order to dissolve Parliament and ask for approval for a policy of adherence to the League of Nations Covenant. On the whole, if, as seems probable for the immediate future, we are, for all practical purposes, working on a two-party system, we may expect to see dissolutions rather than resignations. Also, such is now the extent of party discipline, we are unlikely to see defeats of Governments on votes of no-confidence in the House of Commons. The life of a Government is therefore liable to be co-terminous with the legal life of Parliament unless it sees

¹ See Appendix D.

fit to appeal to the country before the end of a five-year period on the ground that some new issue has appeared on which it desires to ask for a mandate.

ii

If a Cabinet has a stable House of Commons majority, there are no formal limits to its power. The main written rules by which the House of Commons works are its Standing Orders.¹ These are not statutes: they are passed by the House of Commons alone by means of majority resolutions. In theory, then, so long as it continued to command its majority, a Government could do what it liked with the Standing Orders, suspending any it wished whenever it wished. And a Government need not, today, fear very much about the stability of its majority. It has the natural loyalty of its supporters: they are rarely likely to wish to see it unseated and the Opposition put in its place. Further, they are unlikely to wish to see it decide to dissolve: an Election contest will cost the individual member time and money, and at the end of it he may not be returned. If his local association is at all orthodox he is especially unlikely to be returned if, either from their reading of the debates or as a result of word passed down from party headquarters, they learn that their member has been behaving heretically. So, on the whole, the individual back-bencher will tend to obey his party Whip; that is, the official of his party whose business it is to secure the presence and support of the rank and file at crucial points in the proceedings of the House. So long as the rank and file of the Government supporters obey the Government Whip, the Cabinet will remain supreme.

This state of affairs is, indeed, reflected in the provisions of the Standing Orders of the House.² They are constructed not so much to protect the interests of minorities as to ensure that the will of the majority shall prevail. And this is, in fact, the normal course. The Government can plan fairly far ahead

¹ In addition to the Standing (or permanent) Orders, there are *Sessional* Orders, some of considerable importance, e.g. that setting up the Estimates Committee (see pp. 144-5). And *un-written* rules are most important:

how time is to be used. A general plan for the coming session is drawn up by the Prime Minister in conjunction with the Cabinet before the previous session has come to an end. It is then the function of the Government's Chief Whip to work out in detail how the plan will be brought into operation; he must fit the Government's business into other business for the session, such as necessary annual legislation, financial business, private members' business and debates on addresses from the Throne; and he must also leave a margin of time for contingencies. When the new session begins, it is always necessary to make alterations in this programme. The Chief Whip breaks it down into weekly parts, but he has to be ready to make even daily adjustments, and he attends the Leader of the House of Commons¹ each day for this purpose.

The House of Commons is, however, neither a place in which a victorious and all-powerful majority dictates to a defeated and impotent minority, nor one which is closed to outside influences. While there are no formal limits to the use that the Government might make of its powers, there are strong customary limitations, and the Standing Orders do not come near to presenting a complete picture of the Government's position. The Standing Orders are supplemented, in the first place, by customs of the House that very considerably modify the rigours of majority rule. Originally these customs arose for the protection of the individual member of the House, the "Private Member", as he is still called. They have

¹ A Prime Minister in the House of Commons (where he may be expected to be found today) would himself, if possible, act as Leader of the House of Commons. When a Peer was Prime Minister some other member of the Cabinet who was in the House of Commons had to act as Leader there. When pressure of business is great, however, a Prime Minister who is a member of the House of Commons may not be able to find time for all the work that leadership of the House entails. He may then appoint a Deputy Leader, or another member of the Cabinet may act as Leader (as in the 1945 Labour Government). The Leader or Deputy Leader of the House of Commons will act as spokesman for the Government on some occasions and as representative of the House on others. He deals with questions of procedure requiring Government decision. He announces each week, in answer to a question from the Leader of the Opposition, what items of Government business will be taken on Government days. A member of the Cabinet who is a Peer acts in a similar capacity in the House of Lords.

become altered in recognition of the existence of that corporate division of the House that is the complement of the Government—His Majesty's Opposition. The Standing Orders themselves recognise the right of private members (and therefore of the Opposition) to put questions to the Government; but custom goes much further. Time is allowed so that the Opposition may at all stages criticise the Government's work. The very division of the phases through which a Bill passes in its career through the House—the First and Second Readings, Committee, Report and Third Reading—are arranged with this end in view. In Committee of Supply the choice of subjects for discussion lies with the Opposition. Further, the actual time to be spent on various stages of business is, so far as possible, arranged beforehand "behind the Speaker's Chair", and "through the usual channels"; that is, by informal discussion between the Government and Opposition Whips.

Again, the Government is by no means insensitive to all the reactions of its own followers, nor are the followers entirely docile and immune to all influences other than those of their party leaders. The electorate is not entirely an inert mass of passive citizens, inactive and indifferent between General Elections. However far such descriptions may fit some individuals, others are organised in interest groups, maintain a constant watch on the activities of Governments, and are vocal on issues that concern them. Interest groups may be active in separate constituencies, or on a national scale. One M.P. may be a miners' representative as well as a Labour man and the member for the mining town of X. Another M.P., quite separately from his party or constituency connections, may be known as a spokesman for the Church of England in the R.S.P.C.A. Thus the Government works against a background of constant outside appraisal which also finds its echo in the lobbies of the House; and it is a function of the Whips to keep informed on trends of opinion both in the country and in the House. Signs of unrest in the constituencies, amongst interest groups, or on the part of a sufficient number of back-benchers, may lead to changes in a Government's plans and proposals.

The question is not one, therefore, of forcing through, willy-nilly, what the Government has seen fit to include in its programme. The Government is faced in the Opposition, and, in marginal cases, in its own members, with a sounding-board for outside opinion: in its own interests, if not from respect for the traditions of the House, it must to some extent be flexible and conciliatory. It will, for instance, concede considerable alterations in a measure without coming near to the point of being forced to do so. This occurred in 1934 in connection with the Incitement to Disaffection Bill: it occurred again in 1946 over the powers and functions of the Steel Board. The Government will seek, too, in settling arrangements for debates, not to offend the Opposition's sense of fair play, or it will invite obstruction resembling the "barracking" of a football crowd and arising for a very similar reason.

Equally, of course, the Opposition must recognise the duties that match its undoubted privileges. Its actions must never be merely captious, and it must avoid damning itself in the eyes of the electorate by "never giving the Government a chance". It will, in any case, pay far better if it gives the Government enough rope to hang itself. For the Opposition too is playing its rôle before the public. The Government has the responsibility for running the machine and making improvements in it: the Opposition has the responsibility for insisting that what the Government is doing shall be open constantly to inspection, and that the arguments against as well as the arguments for the Government's policies will be heard.

iii

The Cabinet, in addition to initiating developments or changes of policy, must keep the machinery of government working: it must work through Parliament and with an eye on the public, but it must also work through the administrative departments of state. It must be borne in mind that these departments have their own continuity, and that in them, and in them alone, is there full detailed knowledge of the

operation of the government machine. To a very considerable extent, therefore, the success of our system depends upon co-operation between the departments and Ministers. Unless a member of Parliament is a Minister or a Junior Minister, or has himself been a Civil Servant, he has no direct means of knowing in detail how any department works or what administrative problems are likely to be involved in the initiation of this or that policy. A new Minister may well be a novice so far as his own department is concerned, and it requires considerable experience before the inter-relations of the various departments can be understood. This vast machine, developing over a very long period, could not depend for the whole of its direction and co-ordination simply upon a dozen or twenty amateurs and their amateur assistants. It must, of necessity, have its own devices for direction and co-ordination: it must solve many of its own problems and not expect Ministers to solve them for it. And yet each Minister is not merely to be held individually responsible for all that passes in his department and jointly responsible with his colleagues for what they jointly decide; he and they are also to steer the machine, and may be determined to take it into new or different courses, or even to make alterations in its working. We can take for granted the trustworthiness of our Civil Service: even so, we can appreciate to what an extent Ministers must often rely upon the advice of Civil Servants in order to distinguish the possible from the merely desirable, and to what an extent also they must always be dependent, for the time they have in which to consider any problems, upon Civil Servants dealing with other problems of which they, the Ministers, never hear. By the same token, the integrity of Civil Servants must also very often be left to determine whether Ministers hear about all the questions they ought to settle.

There are, however, certain sanctions which help to maintain the trustworthiness of the Civil Service. The first is paradoxical. The Civil Servant enjoys immunity from criticism because responsibility for his actions is taken by the Minister. On the face of it this might appear to invite irresponsibility on the part of the Civil Servant, but in fact it has the opposite effect, for Ministers are only willing to answer for what their

Civil Servants have done because they consider that they can trust them; and once such a system is established, it becomes of mutual advantage to maintain it, for the political game will involve no more than fair risks for the Minister if he is unlikely to fall save for his own mistakes, while the Civil Servant, unless he is very ambitious and unscrupulous, will prefer to have his errors remain a service matter rather than to try to be too clever and incur public disgrace. This sanction is supported by another. The Opposition, and outside interests, and even the Government's own back-benchers, all make it their constant business to pry, by means of Parliamentary Questions and letters to Ministers, into what the departments are doing; so that there are plenty of questions that the Civil Servant would himself have to answer if the Minister were not there to answer for him. As it is, the Civil Servant prepares the answers and the Minister gives them, and it is again of mutual advantage that the answers should be good ones. By giving good answers the Minister helps to build up a parliamentary reputation for himself. By providing Ministers with consistently unconvincing answers a department would invite some form of enquiry, and, as a consequence, some undesirable publicity. There are also further sanctions in legal provisions and in the traditions of the Service; but these are subsidiary to the two that have just been discussed.

These features operate whatever the characters and capabilities of individual Ministers may be. Hence it has been rare for a department to "run the Minister", and the effectiveness of a Minister's influence depends very largely upon himself. How far that influence permits a Minister effectively to run a department will vary to some extent, of course, in accordance with differences in departmental traditions and the capacities and outlook of leading officials; but it also depends most importantly upon the Minister's own activity and intelligence. And both of these qualities are needed: an active Minister who will not listen to his officials, or who will not bother to understand some of the central details of departmental work, will not run a department successfully; and the intelligent Minister must remember to give his department a lead. There is a world of difference between the

system at its best and at its worst, and the ultimate responsibility for getting the best from it lies with Ministers and not elsewhere.

iv

It is evident that the working of the Cabinet, and its efficiency, must be considerably affected by the relations between the individual Ministers and between the Ministers collectively and Civil Servants and Parliament. The Government, or "Administration", is, in the first place, too large a body to act continuously as a unit. What with Ministers, Junior Ministers and other offices, it is liable to employ about seventy members of the House of Commons.¹ Since its existence is not laid down and defined by statute, however, there is no legal limitation on the size of the actual Cabinet, and it varies in size from time to time. Mr. Attlee's Cabinet, as formed after the General Election of 1945, contained nineteen members in addition to himself. Mr. Baldwin's Cabinet, formed after the Election of 1935, had twenty-one members in addition to himself. The first "National Government" of 1931 consisted of the Prime Minister and nine other members. When Mr. Churchill's War Cabinet was set up in 1940 it had only five members all told. The normal size has been round about twenty. A committee of this size is unwieldy and could not, in any case, give detailed attention to the whole of the work of government. There is therefore some division of labour. The work of the individual Ministers is made lighter by reason of the fact that they can trust their departments: they can rely on their permanent officials not to bother them with minor matters or to give them incoherent explanations of important matters. They can work at the level of principles and take the details for granted. In relation to the individual Ministers, the Cabinet itself practises a similar economy. So far as possible a department is its own Minister's business and will not concern his colleagues unless its doings cut across the doings of their departments or unless it has such a degree of parlia-

¹ See Appendix E.

mentary or of public attention focussed upon it that Cabinet decisions are called for. Also, when one or two departments are involved in common in the operation of a policy, not the whole Cabinet but only the Ministers concerned need deal with it so long as it does not raise any major political issue. They may work by informal co-operation, or they may form a Cabinet Committee, and their work will be lightened by the existence "at the official level" of inter-departmental committees or other arrangements. Like the Minister in his own department, committees of Ministers jointly have as much settled for them as possible, are asked to read as little as possible and have the issues set out for them briefly and lucidly so that they are in no doubt as to what it is they are being asked to decide, or what the consequences of their decisions will be. The same methods operate again at the Cabinet level. The Cabinet is aided, not only by its own committees and by all the hierarchy of official arrangements beneath these, but also by a permanent Secretariat which prepares the agenda for its meetings, and circulates the necessary papers for consideration before meetings and the minutes stating the conclusions arrived at in the meetings. The Secretariat is also a junction for departments, and for the network of inter-departmental bodies by which Ministers are assisted; it has to see that the relevant information is obtained for Ministers from a department or an official committee, and also that the decisions of Ministers are conveyed to the right quarters. Within each department the individual Minister has his own "private office" composed of permanent Civil Servants detached from departmental work for the purpose of seeing that the Minister's papers are dealt with. The Cabinet Secretariat keeps in touch with the private offices and also with the heads of departments—the Permanent Secretaries or Under-Secretaries—who keep an eye alike on the private offices and on the general activities of the departments. It also keeps in touch with the more important inter-departmental committees. Some observers have considered that the Cabinet Secretariat, which developed very greatly during the 1939–45 war, has become the most important part of our machinery of government, and I will return to it in a later chapter.

As a result of these arrangements the time spent in actual Cabinet meetings is much reduced, and Ministers are left with more time for dealing with departmental and parliamentary business. This is highly necessary, for each Minister needs all the time he can get. Although they are reduced to the minimum, the number of points which departments have to put up to Ministers for decision is formidable. Ministers have very often to discuss such points with their permanent officials in order to understand them properly and to decide whether they can be settled out of hand or will require consultation with their Cabinet colleagues. They have to spend time reading reports or receiving them verbally in order to keep in touch with the work of their departments. They have to study the briefs prepared for them by the department for Cabinet or other meetings they are attending, or for the House; and in the case of a department in which much interest is being taken these will include the answers prepared to Parliamentary Questions, together with suggested replies for anticipated supplementary questions. They have to make time for receiving delegations, for speaking to press conferences, and for attending functions. They have voluminous correspondence from M.P.s and members of the public; all such letters, save the anonymous ones, are answered after scrupulous official consideration, and a surprisingly large proportion of the letters that are addressed to a Minister are actually answered by letters signed by the Minister himself. When all this has been allowed for there is still the very considerable amount of time that the Minister has to spend in the House, just because he is a Minister and should be there to speak for his department.

The question rises whether all this does not involve a too great dissipation of energy, and therefore whether, even with the provision that has been made, the Cabinet can really carry out its functions efficiently. I return to this in Chapter VIII.

v

The Cabinet is a piece of governmental machinery, but it is also a team of men who have to work together. It is in this

connection that separate attention requires to be given to the rôle, within the Cabinet, of the Prime Minister. It is dual. He is both a chairman, securing smooth team working, and a leader. Both functions are of first importance. The individual Ministers are important people, often with forceful characters, strong views, their own followings, and their own pet schemes and ambitions. Financial (and other) resources, and time in Parliament, are limited; and the activities of one department cut across those of another. The Prime Minister must try to make his colleagues pull together. He must bring out and settle hidden differences at an early stage in case they later come to the fore more publicly. This would be a harder task if he were not also the leader of the Government. As it is, there have been occasions in recent years when the danger has rather been that the other members of the Cabinet might be overshadowed by the Prime Minister. The cause of this is, of course, the tendency that has now been developing, for close on a hundred years, for General Elections to turn on the personalities of two rival party leaders. If a General Election returns Mr. Churchill rather than the Conservative Party, then neither his Cabinet colleagues nor the councils of his party will be able to stand very strongly against him. They are too much in his debt: he is too valuable to them for winning elections. The Labour Party, by its apparatus of the Party Conference and its strong corporate executive, has sought to work by party leadership on team lines rather than by the dominance of single individuals. This may work within the fold of the party, but it is likely to be less effective in relation to the public at large, if the public is too deeply imbued with the vision of politics in terms of personalities. Naturally, this system has its disadvantages. If the characteristics of the boss predominate over those of the chairman, a strong Prime Minister will not get the best out of his Cabinet; the quality of its work will be thinner because it is relying too much upon the outlook and scope of one man. It has its disadvantages for a party also, because they are tending to put all their eggs in one basket. Just as they may be dependent upon the popularity of one man for getting into office, so, if he loses his popularity, he can lose them office; and the public can be very fickle in such matters. On the

other hand, this consideration may act as a restraining influence upon a party leader. His party's losses are his own, and he is no more anxious to be out in the wilderness than they are. If he is wise, therefore, he will not try to exclude other potential leaders from the Cabinet, and he will try to get the best out of them and to let them have the credit for it. If a proper balance is obtained, then the working of the Cabinet will be at its smoothest. A leader with accepted authority and acknowledged fair-mindedness can secure agreement amongst his colleagues more quickly than a weak leader, or one who is known to favour particular colleagues. There will also be less objection to leaving some matters to be settled by his judgment alone, on occasion, without consulting the other Cabinet members.

vi

The development of the authority of the Prime Minister does not affect, however, the central constitutional rule of collective responsibility. This rule does not mean, as it is sometimes supposed to mean, that the Cabinet as a whole is fully responsible for everything that happens in the governmental machine under its care. That would be impossible. There are, therefore, many occasions on which only the Minister concerned is responsible and must clearly stand on his own feet. The Cabinet is not obliged to endorse any foolish statement one of its members may make or any of his errors of judgment or inequitable actions unless it is evident that before speaking or acting as he did a Minister obtained prior Cabinet consent. It would be impossible for Ministers to obtain prior Cabinet consent to all they proposed to say and do, and for that reason they must, like their own officials, frequently act on their own initiative. When a Minister so acting incurs censure, then the other members of the Cabinet have to consider whether they will stand by him or not, and what they decide depends upon the question that is at stake and the quarter from which the censure comes. On a minor matter on which a Minister is attacked by a handful of

members he can look after himself. If the Opposition as such takes up the question, then the pros and cons have to be carefully weighed. If the question is one that is not essential to the Government's programme, yet very strong feeling has been aroused in the country, they will probably decide to sacrifice the individual Minister and make a change in the policy of his department. If such a matter, however, should be more vital to their programme, then they are likely to stand by the Minister and put the Opposition's attack to the test. Relying on their majority in the House of Commons, they will not, of course, suffer defeat; but they will run the risk of reducing their support in the country and weakening their position at the next election.

Collective responsibility operates automatically in respect of policy that has been announced as Cabinet policy or that can clearly be taken as being by implication Cabinet policy (as when, for instance, it is made the subject of a statement from 10 Downing Street). Then there is no escape for the individual Cabinet members, and in the case, unusual today, in which the consequence is defeat on a vote of censure in the House of Commons, there is no alternative to resignation *en bloc*.

vii

These, then, are the methods and conditions of Cabinet work. The Cabinet is the central part of a complex of forces mutually affecting one another, and analysable into Government and Opposition, private members, the House of Lords, the political parties, other pressure groups, the general public, and the Civil Service. It has to work within limits imposed by all of these. If the party has a programme, then the Cabinet, as a committee of party leaders, must not ignore it if they wish to continue to be leaders; if the electorate appeared to endorse any part of the programme at the General Election, then the Cabinet should not incur the charge of bad faith by appearing to do nothing to implement a promise; on the other hand, the attention of the Cabinet will be drawn to other matters alleged to require action, by private members, the House of Lords,

the Opposition, or organised outside interests; it will also be found that the various departments have accumulated, sometimes over a long period, lists of changes required in the services they administer. The departments, too, will have comments on many of the proposals for legislation the Government may bring forward, whether from a programme or as a result of pressure brought to bear. The departments must be consulted, because they know what machinery already exists and can foresee what effects alternative proposals are likely to have; it is not for them to prescribe ends to the Government, save inasmuch as these may be subordinate to policies already accepted, but they are bound to be the chief advisers on means. Much of what the Cabinet discusses is, therefore, of outside origin, and the consideration given to it is in terms of departmental comments. Even on parts of his own party's programme, a Minister will be liable to sound outside interests and obtain their comments on proposals that affect them; sometimes it is thought worth while to have such interests in some form of permanent relation to a department by having an advisory committee or consultative council. The decisions taken as to which proposals shall be proceeded with, and in what order, will thus result from a weighing in the balance of several factors: the main emphasis will be on the effects on public opinion and the situation of parties, but due weight must also be given to other counsels. The departments are sometimes of the opinion that they are the best judges of what they consider to be the objective, as distinct from the merely political, necessity for particular proposals. They sometimes consider that the public does not know what is good for it, and that the least popular of several possible courses may be the best in the long run. In such a situation the Cabinet must ask itself some questions. If the Government party disagrees with the officials, can the party be won round? If it can, will the Opposition none the less attack by taking the easy course of advocating a more obviously appealing alternative? If the Opposition is going to do this, can the Government, by presenting the arguments for a wiser course, carry the public with it? If this is unlikely, should the Government nonetheless persevere and trust that the trend of events will later provide

justification? These are all difficulties liable to face a Cabinet on almost any of the problems with which it may be confronted; for there is usually an apparently simple solution, and it requires knowledge to see pitfalls. The task is made none the easier in that the Opposition press is often less scrupulous than the Opposition party and will advocate a simple course in simple language that sounds unanswerable to the unwary.

CHAPTER IV

THE HOUSE OF COMMONS

i

THE House of Commons is not simply the sum of its separate members. It has a corporate history of its own, and traditions, some of which have been discussed in considering the Cabinet. But the nature of the House has also been affected by the development of the political parties. By and large, it is of greater significance today that a particular M.P. is a Labour man or a Conservative than that he is the member for X or for Y. The existence of powerful party organisations makes it difficult for any save a very few "independent" members to enter the House; and, today, even the independent member is not regarded as being a mere delegate of his constituents but is returned for what he stands for.

This does not appeal to some people. Why, they ask, should they be compelled to vote, as a rule, for one or other of some party men with none of whom they really agree? There is a good reason. While it cannot be said that we invented the party system as a matter of political genius, since it grew, so to speak, when we were not looking, we may nonetheless congratulate ourselves that we have it, and, indeed, that it has tended to be a two-party system.¹ We should be in a pretty pass if all members of the House of Commons had different opinions. It would pay us little, either, to have returned a man with whom we were in complete agreement on all questions if he were constantly in a minority of one. A country cannot be run efficiently except on one policy at a time, and if we wish to combine efficiency with some measure of popular choice of policies, then the public must be put in the way of

¹ One can say no more than that we have *tended* to have a two-party system. It should not be forgotten that modern parties are less than one hundred years old, and that during the past century we have had considerable experience both of government by coalitions and of situations in which a major third party has held the balance in the House of Commons.

being able to choose amongst policies that have some likelihood of becoming effective. Because strong parties crowd out weak ones, the number of policies amongst which the public are invited to choose is reduced; and the strength of parties is a guide to the policies we consider it worth our while to take seriously. We most of us vote for a party man rather than for an independent candidate because "he is more likely to get in". For the same reason most former Liberals today vote either Labour or Conservative. The consequence is that while we cannot expect to mould the political future exactly after the pattern of our hearts' desires—and rightly, because if any one of us could, would justice be done to other people?—we can, on the other hand, vote with some certainty as to the future behaviour of the party we are supporting and with the additional advantage of knowing that if it obtains a majority of seats in the House of Commons it will have the power to carry its policies into effect.

There is another consideration. Even when one party has been returned, the position is not irrevocable. The party that is out of office after a General Election may be in office after another. Moreover, with our system of single-member constituencies and elections in each constituency by simple majority, what is required to return a party to office is not a majority of all the votes in the country but only more votes for their candidates, separately, than for their opponents, separately, in a majority of constituencies. In the 1945 Election 24,973,398 votes were cast, excluding the university constituencies¹. The Labour Party had less than half of these—11,992,292—but they obtained 393 out of the 620 seats for the territorial constituencies.² Correspondingly, a relatively small margin of votes will turn the result of an election one way or another. In 1945 the Conservatives had 8,665,566 votes but only 189 seats. In 1935 the Labour Party had 8,314,216 votes and the Conservative party 10,456,998. Since apparently a certain number of voters vote steadily for one or other of the major parties, it is sometimes said that elections are "swung by the floating vote", and that all that is necessary in order that it should win an election is that a party should contrive to capture

¹ See Appendix F.

² See Appendix F.

a bloc of voters who are conceived as voting sometimes one way and sometimes another. No doubt there are some people who behave thus, but the explanation of the differences between votes at successive General Elections, especially recently when Governments have tended to last for more or less the whole of their five-year periods, requires to take other factors into account. Between one Election and another there are always some deaths of voters, and some new voters enrolled for the first time. There are also some people who vote at one Election and not at another, not because of political disgust but because it happens to be raining or because they have something else to do. There is thus an element of chance in any General Election result; and after that, before we come to the real waverers, we have to allow for permanent conversions. Elections are undoubtedly swayed, however, by marginal voters, and while it pays a party to aim at conversions, whether these be temporary only or permanent does not matter so far as the particular Election is concerned. The conception of the floating vote has, therefore, that degree of accuracy.

There are three consequences. The first is that the policies of Governments in this country always have a short-term as well as a long-term character, because while a Government's security of tenure may be safe, the renewal of its tenure is precarious. There is never certainty that the whole of our governmental arrangements will continue indefinitely to function as any Government of the day has planned them to function. On the other hand, the supersession of a Government composed of one party by a Government composed of another party does not involve revolutionary change. Former matters of controversy become routine matters of administration, and the parties pass on to new controversies. Five years is too short a time in which to alter the whole social and political structure. We proceed, therefore, in a zig-zag course rather than by a series of radical changes. Secondly, the alterations of course do not take place simply as the result of General Elections. The wheel then turns through more points, but during the tenure of a Government there are also minor deflections just because no Government will deliberately steer for shoals. The best way to ensure the loss of a General Election is to build up

unpopularity while in office, and so Governments are sensitive to all currents of opinion; and, since an Election may be won by popularity built up while out of office, sensitivity to public opinion is also a characteristic of the Opposition. Hence the operation of the House of Commons in terms of debate between Government and Opposition. The third feature of the House of Commons follows from the other two. Since the main lines of House of Commons agenda are fixed by the Cabinet, and, other things being equal, the results of voting on them by the House can be foreseen, we should not picture the House as selecting, debating and settling the fate of the unrelated propositions of its separate members. But, because of its sensitivity, neither should we picture it as being divided simply into yes-men and no-men. Those who decry the House of Commons as a talking-shop are accurate in words if not in meaning. Its essential function is debate; not, however, the mere airing of the personal views of the individual members, but the voicing by them of all the shades of opinion with which they are in contact in the country. Debates influence such opinions, and are in turn influenced by them. This is another reason why it is so little necessary that the man we return to Parliament should exactly and completely represent all our views. We influence the conduct of policy in other ways than by voting at General Elections—by letters to the press or to M.P.s, by public meetings, petitions, delegations, demonstrations. No one of us, in the long run, can expect to see, even by these means, the whole of all his ideas realised. But there are few of us, save the very cranky, who will not in the long run see some parts of some of our ideas realised. This is the essence of our system of government by compromise. It is government by continuous give-and-take, continuous consolidation on highest common factors, continuous wavering between divergent possibilities, and continuous and consistent adjustment to long-term trends of public opinion.

The essential function of the House of Commons is, then, to relate a Cabinet that is all-powerful in day-to-day decisions to the mass of opinion in the country that is more fundamentally all-powerful because it makes and unmakes Cabinets. Through the activities of the House of Commons there is a two-way

traffic. The public learns what the Cabinet is doing; the Cabinet learns what the public thinks of it. Could we not just as well have these arrangements without a House of Commons? Could we not just choose a dozen or twenty men to be the Cabinet and tell them what we thought of them in letters to the press or in referenda on their projects? We could do this, but we should not get the same results. The House of Commons (and, in some measure, the House of Lords, too) provides a place for the making of reputations, and we need, for a Cabinet, men who have established some claim on our confidence. We note the intelligent critic, or the energetic Junior Minister, and, when later we see them included in the Cabinet, we are able to nod our approval. The House also provides continuous discussion, and has, as we shall see, elaborate rules to ensure that discussion will cover as much ground as possible as fairly as possible in the time available. It further provides a degree of intimacy in the relations between Government and people. Few can see Cabinet Ministers in the flesh, but all can see the candidates for their own constituencies; and the members are careful to maintain visits to their constituencies and not to neglect special local interests. In this way there is a bridge between the public and the executive instead of a gulf. A man in the street becomes an M.P.; an M.P. becomes a Cabinet Minister, and a Cabinet Minister who loses his seat at an Election becomes once again a man in the street.

ii

Such, then, is the setting in which the House of Commons works, acknowledged and agreed by all of its members save callow newcomers or exceptional veterans who consider either that too much licence is given to the minority or that insufficient liberty is accorded to the private member with bright ideas. Any great change in either direction would indeed be fatal. Parliament does not so much legislate or administer as ventilate; and the publicity thus afforded to the working of the machinery of government is our chief guarantee of the maintenance of an open society. On the other hand, the business of government is

so great, and the time, especially when allowance for ventilation has been made, is so short, that nothing like the amount of work can be accomplished that even a moderately ambitious Ministry would like to achieve. Rationing of time is therefore essential, and all save very few are agreed that it is inevitable and right that such rationing should be undertaken mainly for the benefit of the Government and the Opposition.

The work of the House of Commons does include considerable participation in the making or amending of laws as well as ventilation. These activities have various aspects. The making and amending of laws is not confined to matters of Government initiative or of general interest; provision is made for private members' Bills as well as for Government Bills, and for "private business" as well as for "public business". Legislation is also divided into its financial and non-financial aspects; and in regard to proposals for expenditure discussion can concentrate either on whether a proposal is economically sound or on where the money to pay for it is to be found. Legislation, again, requires to be considered both in its principles and in its details; and criticism must be catered for differently according to whether it is concerned with particular points or broad policies.

The proceedings of the House are so arranged as to make provision to meet these various requirements. All legislative proposals are presented in the same form, that of an Act in draft, which is known as a Bill; but there are separate provisions for different classes of Bills, according to whether they are promoted by the Government, by private members, or by special outside interests such as local authorities. The first two cases are dealt with in the "Standing Orders Relative to Public Business". As the Government has the control and the lion's share of the time, it itself decides which of its legislative proposals will have priority. Time is allocated for private members' Bills, but is very limited, and so special arrangements have to be made. Subject to the qualification below about money Bills, there is no difficulty about the introduction of a private members' Bill, but if any Bill, once introduced, is opposed, then it cannot proceed unless it can be put down for one of the days (certain Fridays) in the session on which

private members' Bills have precedence; and such is the pressure of competition for these days that a ballot has to be held in order to decide which private members' Bills may have a share of the time. Moreover, since the Government alone has the privilege of introducing proposals for expenditure, no private members' Bill authorising expenditure can be passed unless, as a preliminary, or at an early stage, the Government's recommendation is attached to it. As a matter of practice, private members seek to get the Government to introduce such Bills themselves. Private Bills, on the other hand, are a highly technical subject (and will not be discussed here), and are separately provided for in the "Standing Orders Relative to Private Business".

The financial work of the House is governed by two historical principles; first, that it is the Commons alone that grant to the Crown, in the Finance Act and other Acts, the power to impose taxes; and second, that it is the Commons that grant expenditure from the Consolidated Fund into which the taxes are paid. The costs of some services are provided for by permanent legislation, and are therefore direct charges on the Consolidated Fund. The majority of services, however, require annual supply, which is granted separately. This is done mainly in the annual Appropriation Act, but also in Consolidated Fund Acts, which cover expenditure from the beginning of the year up to the Appropriation Act and also excesses on previously approved expenditure. The Appropriation Act, moreover, both grants the general supplies for the current year and appropriates these supplies and the items of supply voted in the Consolidated Fund Acts to specific purposes for which estimates have been submitted. The estimates are considered by the House of Commons by means of a special procedure, the "Committee of Supply". The resolution to grant money from the Consolidated Fund is made under another special procedure, the "Committee of Ways and Means". The Appropriation and Consolidated Fund Bills are passed on the recommendations of these Committees. The Committee of Ways and Means is used also for the consideration of proposals for taxation. These are put forward by the Chancellor of the Exchequer in the "Budget" to meet the

combined costs of the estimates and of the Consolidated Fund services. The agreed financial proposals are passed in the Finance Bill.

Provision for the separate consideration of principles and details in legislation is made by having the House take legislative proposals in stages. For ordinary legislation, for instance, principles are discussed at Second Reading, and details, as a rule, not in the whole House, but in a smaller Standing Committee. Further, as we shall see, the Committee of Supply is not really what it appears to be; smaller committees serve to acquaint the members with the details of financial questions, and the discussions in Committee of Supply are critical and on questions of general policy. Criticisms on separate points are separately provided for by the institution of Question Time.

iii

The members of the House may engage in a variety of forms of activity: they may, for instance, present petitions, ask questions, propose motions or join in debates. For certain purposes they will be members of the House sitting under the Speaker; for others they will be members of the House acting as a whole in Committee and sitting under a Chairman; on other occasions they may be members of Standing or other smaller Committees into which the House divides. They have to become acquainted, too, with a variety of set procedures for different purposes.

Of these forms of activity the presentation of petitions is least important, because petitions today are few. Normally, their presentation involves no debate in the House, and any scrutiny of them is undertaken by a Committee. Questions, on the other hand, are of first-rate importance. Members may give notice of questions on any aspects of Government business. If they wish to have these answered orally in the House they "star" them with an asterisk, but each member is limited to three such questions on any one day. Unstarred questions, and any starred questions that cannot be answered in the House within the time allotted, are given printed answers in the

Official Report of Parliamentary Debates. When an oral reply has been given to a starred question, supplementary questions may be put of which no prior notice has been given, and they may be put by questioners other than the original questioners. Questions sometimes genuinely seek information; more often they seek to air a grievance or to embarrass a Minister. They are strong weapons of the Opposition. On his side a Minister can ignore supplementary questions fairly easily, and he can even refuse to answer a question that is put down, by alleging, for instance, the necessity for secrecy or for avoiding causing prejudice to current negotiations. But Ministers are careful not to make too much use of such tactics, because if they do they may play into the hands of the Opposition even more than if they give information that they would prefer to keep to themselves.

The motion is important because it is a key device in procedure: it is the prelude, and the only prelude, to debate, and it may, on occasion, lead to the end of a debate. The Standing Orders indicate what motions can be moved and when. In cases of doubt the Speaker interprets these rules and in cases of urgency or necessity the Government may, by means of its majority, suspend or alter them. Some motions are connected, as we shall see later, with particular stages in the set procedures for specific purposes. Others, however, have their own specific functions. Thus, after Question Time, it is possible to move for the "adjournment of the House". This, if successful, is a means of introducing a special discussion of a matter of urgent public importance. Debate can also be allowed briefly on the adjournment in the evening, and is generally used to raise individual grievances. There are further methods of initiating special debates: for instance, debate will always ensue if the Opposition moves a vote of censure. Debate at certain points of transition from one phase of business to another is prevented, on the other hand, by rules which make the transition take place "without question put".

The House sits under the Speaker at Question Time, during general business, and during certain stages of legislation. When it passes, however, to the consideration of the details of legislation, or to financial proposals, it sits as a Committee and

Under a Chairman. For ordinary legislation the House sitting as a Committee is known as the Committee of the Whole House, and for financial business, as already explained, it is known as the Committee of Supply or the Committee of Ways and Means, according to the type of financial business involved. The same member acts as Chairman for all three Committees, and he is also Deputy Speaker. Since 1882, however, time on ordinary legislation has been saved by the practice of committing non-financial Bills to smaller committees instead of to the Committee of the Whole House. Today all such Bills go to these Standing Committees unless the House otherwise orders. Bills "of first-class constitutional importance" are reserved for the Whole House. Until 1945 the rule was that there might be up to five such Committees, each consisting of from 30 to 50 members. As a result of increased pressure of work it was then decided that there might be any number and in practice six have since been used. These Committees are nominated by a Committee of Selection which may also, for particular Bills, add further members to a Committee if they have special qualifications. The chairmen of the Committees are appointed by the Speaker from a panel set up by him at the beginning of every session. Until 1945 the Committees sat for two hours on each of two days in the week. The arrangement now is that they may sit for two and a half hours, if necessary, on each of three days in the week. The House also appoints Select Committees which are used for purposes of enquiry and generally for such purposes as require the examination of witnesses. They may, for this reason, be used instead of Standing Committees, which cannot hear evidence from outside parties, for the Committee Stage of a Bill. As we shall see, a Select Committee has been used for the purpose of examining Estimates. A further important Committee of the House is that on Public Accounts.

It has already been noticed that there are certain occasions, such as on a motion for the adjournment of the House, when special *ad hoc* debates can be started. Further occasions are made for general or "open" debates ranging over any aspects of the Government's work, and for particular debates on specified aspects of policy chosen by the Opposition. The most

outstanding of the first class of opportunities for debate is that afforded by the King's Speech at the beginning of the session. The King's Speech is, in reality, the Government's comprehensive statement of general policy, and for about a week thereafter there ensues a debate in which the statements in it can come under comment and criticism. Other occasions for general debate are afforded in the second and third readings of Consolidated Fund Bills. Another form of policy debate takes place in Committee of Supply. Nominally the function of the House in this Committee is to examine the Government's financial estimates. In fact, the work is too technical and too detailed for a large committee, and such scrutiny as is undertaken on behalf of the House is done elsewhere. What happens instead in the Committee of Supply is that the Opposition chooses certain "votes" (that is, divisions of the estimates relating to individual government departments) that they wish to discuss, and so, in effect, secure discussion of particular fields of policy and administration. This procedure is allowed to occupy at most twenty-three days,¹ and the House does not necessarily, in that time, succeed in covering all the votes. The proceedings are not, however, prolonged, and at the end of the allotted time all outstanding votes are passed without more ado.

The passage of legislation involves important set procedures. Some of the minor variations between the procedure for Government and that for private members' Bills have already been noticed, and there are others; but they are of small account, and the procedure for Government Bills may broadly be taken as being typical. The practice rests on custom, and is not even stated in the Standing Orders. Its essence is the taking of a Bill in stages, to allow for separate consideration of principles and details, and also to allow time for the nature of the Bill to be appreciated, and for the Opposition, interested parties and the public generally to consider their attitude to it, and prepare their arguments. In emergency this spreading-over process can be, and has been, departed from, although even then the successive stages have been honoured; but it is recognised that only serious emergency justifies such a departure.

¹ I.e. twenty days that must be allotted, plus those that may be allowed.

■ If the Bill is for the purpose of authorising expenditure or imposing taxation it may be preceded by resolutions passed in the Committee of Ways and Means. The Government may also decide to preface the usual procedure for a non-financial measure by resolutions, if they consider that the proposal they have to make could do with even more occasions than are usually allowed for its consideration. Otherwise, the career of a Bill begins by notice of its introduction being given,¹ which is followed by the "First Reading", as a rule without debate, and simply involving the reading of the title of the Bill by the Clerk of the House. Discussion of the principles of the Bill follows at the next stage, the "Second Reading", on the motion that the Bill "be now read a second time", and a counter-motion proposing some amendment. Only one such amendment is allowed, and no more are needed, as the purpose of the debate is simply to deal with the general merits and demerits of the Bill. In cases in which a financial resolution is required and has not yet been passed, this stage now follows, and the financial resolution is reported, usually without a debate. The Bill then goes to Committee, either the Committee of the Whole House or a Standing Committee, for consideration in detail. The next stage is the report from the Committee to the House. If the Bill has been in Committee of the Whole House and there are no amendments, "Report Stage" is formal; but in any other case it involves the possibility of further proposals of amendments and, therefore, of debate. After Report comes the last stage, "Third Reading", at which only verbal amendments may be proposed, and which is really a second general debate on the principle of the Bill as it stands in its final form. When a Bill has passed its Third Reading it leaves the House of Commons and is presented to the House of Lords.

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Parliament and, therefore, the House of Commons must, according to usual practice, meet at least once a year because

¹ I refer here, of course, to its career in the House of Commons. As explained in Chapter V below, Bills may begin their Parliamentary careers in the House of Lords.

certain essential legislation, including taxation and the expenditure of public funds, is passed only for a year at a time, and must be renewed annually. The session normally begins in October or November, and continues for twelve months, with breaks known as "recesses" at Christmas, Easter and Whitsun, and a longer one in the summer. The session is brought to an end by the process of "prorogation", as distinct from that of dissolution which brings a Parliament to an end. Prorogation is performed either by the King or by a Royal Commission. All business unfinished at the end of the session is terminated: public Bills which have not passed through all their stages lapse. For other breaks, however, Parliament is not prorogued but adjourned, and uncompleted business is not thereby terminated.

The normal times of meetings during the session are the first five days of each week, beginning at 2.45 p.m. on Monday to Thursday, and at 11 a.m. on Friday, and stopping at 11.30 p.m. on Monday to Thursday unless Standing Orders are suspended, and at 4.30 p.m. on Friday. The use of time on all of these occasions has to be rationed in two ways, first in respect of the general division of each of the days of the session amongst different classes of business, and secondly in respect of the ways in which members may use the time on each day that is devoted to a particular class of business. The general allocation of time to some extent varies according to the stage of the session. There are, however, certain regular items for the various days. From 2.45 till 3 on Mondays to Thursdays, private business is taken. Questions follow from 3 to 3.45. Immediately after questions a motion for the adjournment of the House may be made. If it is accepted, however, it is not actually moved until 7.30, and there follow instead, after leave to move the adjournment has been given, certain further formal items such as petitions and private members' ballots. Then on Tuesdays and Wednesdays (and also on Mondays and Thursdays, if necessary) come motions for leave to bring in Bills and for nominations for Select Committees. Only after all these preliminaries comes the Order of the Day for Public Business. This continues until 7.30, when adjournment motions or opposed business may be taken. After that public business

is resumed and continues until 11 p.m., when, unless a closure (which is explained below) is moved, it is interrupted and either unopposed business or reports from the Committee of Ways and Means are taken. On Fridays only private notice questions are taken, and the order of the day follows after private business and petitions.

These standard arrangements are, of course, subject, as necessary, to modification. For the session of 1945-6, for instance, the House agreed the following time-table:

Meeting of House	2.15 p.m.
End of Unopposed Business . .	2.30 p.m.
End of Questions	3.15 p.m.
Adjournment Motions and Opposed	
Private Business	6.15 p.m.
Interruption of Business . .	9.15 p.m.
Adjournment	9.45 p.m.

A resolution of the House is required for a Saturday or Sunday sitting. Adjournment can be postponed and abnormally long sittings ensue. In 1936 there was a sitting of 34½ hours on the Unemployment Assistance Regulations.

The Government, as has been seen, may arrange for certain variations on Mondays and Thursdays. Otherwise, the rationing of time applies to the periods earmarked for public business. This has normally been done by giving Government business precedence on certain days at the expense of the private member. The Labour Government began the 1945 session by taking the whole of private members' time. Even so, the Government has little enough time because allowance has to be made for regular annual business. About a week may be taken up with the debate on the King's Speech at the beginning of the session. Several days are occupied with annual Bills and with discussion on the adjournments for the recesses. Twenty or more days are spent on the annual estimates and other financial business will account for another twenty. It has been calculated that over the period from 1906 to 1938 the average distribution of the time of the House was as follows: Government Time, 43 per cent.; Opposition Time, 31 per

cent.; Private Members' Time, 14 per cent.; Indeterminate (including Budget and Finance Bills and Private Bills), 12 per cent. The actual settling of days for Government work is also to some extent dictated by the fixity of annual business; for instance, by the occurrence of the King's Speech at the beginning of the session, and by the fact that the financial year ends in March.

The freedom of the members' use of time at particular stages of the House of Commons agenda is also restricted in various ways, some depending on custom and some provided for in the Standing Orders. Underlying all restrictions is the position and authority of the Speaker and Chairmen, who grant permission to speak and interpret the customs and rules. Deliberate obstruction, however, is rare since the days of the Irish Nationalists, and to some extent the members can even be relied upon to recognise an obligation to be reasonably brief in what they have to say. The Standing Orders, however, permit the Government, without requiring to draw upon its ultimate reserves of power, to confine debates within shorter space than the unfettered self-expression of the members would achieve. We have already noticed how the opportunities for opening debates are circumscribed, and how, for particular procedures—such as, for instance, the debates in Committee of Supply—there is a fixed time-limit. There are further methods for curtailing particular debates. In the House itself, the Standing Committees and the Committee of the Whole House, the device of "closure" may be employed. This is operated by a member moving "that the question be now put". If such a motion has the support of 100 members in the full House, or of 20 in a Standing Committee, and if the Speaker or Chairman is satisfied that it is not such as to constitute an abuse of the rules of the House, or as to infringe the rights of the minority, then it will be accepted, and it brings to an end any further discussion of the question at issue. In addition to this device, which may be used on any kind of motion, there are other devices whose use, in general practice, is confined to legislation. For Bills of a controversial nature the Government may move a "guillotine" for the purpose of allotting fixed periods of time to the discussion of the various stages, or even for allotting fixed

periods for the discussion of specified portions of the Bills in Committee and Report. At the end of each such fixed period discussion has to stop and the next stage is taken. This device obviously saves time, but it may have the disadvantage of preventing important aspects of Bills from receiving adequate discussion because so much of the time available is spent on some points that others are never reached. Another device is preferred, which consists of the power to select the new clauses or amendments to be proposed, and can thus be used to ensure that time is spent on essential and not on repetitious or trifling questions. This device is known as "kangaroo". It is vested in the Speaker on the Report Stage, and in the Chairmen of Committees. It may be used either in conjunction with "guillotine" or separately.

v

The procedure of the House of Commons is undoubtedly complicated. This is inevitable. The procedures of the legislatures of other countries, and even of local councils, are also complicated. It should be remembered, too, that it is much easier to learn a procedure by having to work to it than by reading about it. The new member of the House of Commons is no doubt liable to find himself at sea for some time. But this is not a major criticism when he may expect to have five years in which to learn. The question that matters is whether the House of Commons works efficiently.

This question has two sides. The House would not be efficient if it hampered the Cabinet in its control of the machinery of government; on the other hand, it might as well not work at all if the Cabinet ceased to be in some sense accountable to it. Governments have, of course, been particularly concerned with the first aspect: the longer the time they have to spend explaining themselves to the House, the less business can they do, and they have sought to make the House work more expeditiously. This is the explanation, for instance, of the Labour Government's action in 1945 in providing for more Standing Committees and in establishing

a "guillotine" for them by naming the days on which they must return Bills to the House. In such actions, however, Governments have been careful to respect the authority of the House,¹ and they have been wise to do so, because they have probably continued to be able to put through quite as much legislation as the public has wanted. In their first session of about fifteen months in 1945-6 the Labour Government secured the passage of 84 Public Bills. This was not a record in actual number of statutes. In 1919, 102 Bills were passed, and 91 were passed in 1924. But the 84 Bills of the Labour Government were very much more far-reaching and were more comparable with the 56 of the Liberal Government of 1906. In spite of the speed of work, however, the Labour Government did not, in general, fail to provide opportunities for discussion by arrangement with the Opposition: the only major sufferers were the individual private members.

Some people, of course, would not rest content with this statement. The Labour Government has been accused of wishing to "railroad" its legislation through the House. It has been pointed out that while the Reports of the 1945-6 Select Committee on Public Business made proposals for making the work of the House more effective, the greater number of these were rejected by the Government; and the strongest criticisms have been made of its use of the "guillotine" on the Transport and Town and Country Planning Bills in 1947 (37 clauses and 7 schedules of the Transport Bill were not discussed in Committee, although there were 247 Government amendments, and there were 376 amendments on the order paper for Report stage). In regard to these two Bills it has been further stated that the position was exacerbated inasmuch as, first, no sufficient time was given for either the public or the Opposition to take in the full significance of their complex and radical proposals; and second, that as presented the proposals were hastily conceived, badly drafted, and faulty in important details whatever might be thought about their general principles.

It is not easy, however, to pick one's way through this controversy, which, as will be shown in the next chapter,

¹ But see the following two paragraphs.

becomes further complicated by involving questions of the functions of the House of Lords. It is no doubt true that a Labour Government is perhaps particularly tempted during its first two years of office to get as much benefit as possible from its House of Commons majority, and to establish as many positions as possible from which a Conservative successor may find it hard to retreat. It has to be borne in mind on the other hand, however, that to some extent charges made by Oppositions that Governments are engaging in constitutional sharp practice are part of the small-change of political debate and ought to be taken in a Pickwickian sense; while at the same time the nature of the economic situation in 1947 would inevitably involve any Government, whatever its political complexion, in attempting large-scale action, over a very wide field, and at maximum speed. In point of fact there is no immediately applicable objective test that can be employed in such a situation to determine whether the Government or the Opposition is right or wrong;¹ but there is at least this safeguard, that the actions of the Government will undoubtedly be limited by what it considers the public, as aware of the Opposition's criticisms, will tolerate.

At a less controversial level, while few people doubt the efficiency of the House of Commons as regards the securing of opportunities for the general discussion of principles, some have doubted whether the time it spends on details is usefully spent. A minority argues now and then for further strengthening of the position of the Cabinet by reducing the discussion of details, even in Committee, to a minimum. A commoner view is, however, that adequate discussion of principles must rest upon the capacity to give thorough sifting to details, and even at times to induce the Government to accept amendments. Those who take this view are often concerned whether the present opportunities are sufficient, even when Governments are not being accused of "railroading". For ordinary legislation the general plan of the committee system is not contested, although it is argued that it would be improved if the separate committees were allowed to specialise on particular classes of Bill. Concern has been felt by some about the control of

¹ Cf. Appendix D on the "Mandate".

expenditure. As we have seen, this is only nominally the work of the Committee of Supply, and such control as there has been has come from the activities of the Estimates and Public Accounts Committees. The practice of setting up an Estimates Committee has been followed each session since 1912, save during war years. The function of the Committee has been to examine any of the estimates submitted to the House, to make suggestions regarding their form of presentation and regarding economies that might be made consistent with the policy implied in them. The Public Accounts Committee was first appointed in 1861 and works with the Comptroller and Auditor-General, who is not a servant of the House or of the Executive, but an independent officer of the Crown charged with the duty of auditing the national accounts. Whereas the Estimates Committee examines current estimates, the Public Accounts Committee examines appropriation accounts primarily with a view to ensuring that money granted by Parliament has been applied as Parliament intended. Thus in 1946, while the Estimates Committee examines the 1946-7 expenditure, the Public Accounts Committee examines that of 1944-5. Neither Committee is primarily concerned with 1945-6 expenditure in 1946, but both on occasion find it necessary to go beyond their immediate terms of reference, and they have to some extent overlapped in functions, since, for instance, the Public Accounts Committee has not confined itself to questions of regularity but has considered questions of economy. It is generally agreed that the post-mortem work of the Public Accounts Committee helps to ensure regularity. More concern is felt on the score of economy. Both Committees find the field too large and too intricate, although the Public Accounts Committee has the assistance of the staff of the Comptroller and Auditor-General. There has therefore appeared to be some danger that, so far as House of Commons oversight is concerned, extravagance will not be nipped in the bud, but will have at least two years in which to develop and may not be discovered even then.

Now, in preparing the estimates the departments are subject to the scrutiny of the Treasury. The question of House of Commons oversight is not one of filling a vacuum, there-

fore, but one of supplementing an activity already undertaken inside the administrative machine; and I will on that account return to it after discussing the working of the administrative organs of government. Another question in regard to which doubt has been felt as to whether House of Commons oversight is adequate is that of delegated legislation. The dimensions of this question will also be better appreciated if it is left until later.¹

¹ The Standing Orders as ordered to be printed on 4th November 1947 contain several new provisions for saving time, and involve a further re-organisation of the time-table; e.g. the House is to meet at 2.30 p.m., and interruption of business comes at 10 p.m. In addition, twenty-six days are now allotted to Supply, and the rules affecting Supply procedure are altered. A "Business Committee" is set up to make recommendations for the application of orders allocating time on Bills; and Standing Committees similarly appoint Business Sub-Committees. Provision is made for the attendance at Committees of the Law Officers of the Crown. Arrangements are made to permit earlier adjournment, when desired, in order to facilitate the business of Standing Committees.—W. H., February 1948.

CHAPTER V
THE HOUSE OF LORDS AND
THE CROWN

i

THE foregoing accounts of the Cabinet and the House of Commons seem to leave little room for the House of Lords. Why do we have a House of Lords at all? Could we not get on just as well without it?

The composition of the House of Lords does, indeed, today seem arbitrary and antiquated. It is open to certain Princes of the Royal Blood, the Archbishops, Hereditary Peers of the Realm (Dukes, Marquesses, Earls, Viscounts and Barons), the Bishops of London, Durham and Winchester always and the 21 next senior Bishops, 16 Scottish Peers, elected by the whole of the Scottish Peerage for the duration of each Parliament, the surviving Irish Peers formerly elected by the Irish Peerage for life (there have been no further elections of Irish Peers since the Irish Treaty of 1921), and seven Lords of Appeal with the non-hereditary title of Baron. The legislative functions of the House of Lords are not impressive. They were limited by the Parliament Act of 1911, and as a result the Lords may now never finally reject any Bills agreed by the House of Commons: they cannot reject money Bills at all, and while other Bills will not become law within three sessions if the Lords continue to reject them, they will then become law if they have been up to the Lords three times, and if the Commons continue to press them, because the Royal Assent will be given without the Lords being further consulted. The House of Lords is also, of course, the highest court of appeal in Great Britain, but its legal activities are undertaken by certain only of its members, the "Law Lords", who are in the Upper House for that purpose.

Again, although by well-established convention that was made law in the Ministers of the Crown Act, 1937, certain

members of the Cabinet have been, and are still, required to be drawn from the ranks of the House of Lords, the majority of Cabinet Ministers are members of the House of Commons, and it is considered highly improbable that any Peer will ever again be Prime Minister. These are natural enough usages, since the main scene of debate is in the Commons: the Opposition is centred there; the telling questions are raised there; by the composition of the Commons is the complexion of the Government determined.

Then why do we continue to have a House of Lords? And do we derive any benefits from continuing to have it? I think the main answer to the first question is that we continue to have a House of Lords because we have had one for such a long time that we have got used to it. We are loath to part with an old institution; *not necessarily that we are conservative* as a people, but, as I shall presently suggest, for the selfsame reason that in our private affairs we are reluctant to throw away an old thing in the house; we think it might come in handy some time. But there are other reasons, too, why we keep the House of Lords. It has never, for instance, quite given us positive reason for getting rid of it; at crucial moments in quarrels with the House of Commons it has climbed down, or accepted with more or less grace the pressure on it to climb down. (The sanction on such occasions has been the threat by the Crown to create a sufficient number of new Peers to overcome opposition in the Lords to the proposals of the House of Commons majority.) Indeed, we may say that one reason why the House of Lords is still there is that its members have recognised that there are limits to the conservative spirit of the English. Another reason why the House of Lords continues is that there is a common belief that every country ought to have a second chamber, as a revising body, or to check the excesses of the Lower House, or for some such reason; and we have never been able to think of any form of second chamber other than the House of Lords that would suit us.

This was illustrated by the circumstances attendant upon the passage of the Parliament Act. That Act was passed by a Liberal Government after prolonged experience of blocking action by a Conservative majority in the Lords. In the early

part of the nineteenth century Whig and Tory representation in the Lords had been less disproportionate, and, in any case, Whigs and Tories differed less than did Conservatives and Liberals in 1906.¹ By the late nineteenth century many former Whigs had parted company with the Liberals; the Gladstone-Rosebery Government of 1893-5 already felt the inconvenience of a situation in which the Opposition seemed to have acquired the advantage of having a permanent majority in the other chamber. Nonetheless, in the relations between the two Houses as such, one point had, in the course of the nineteenth century, appeared to become very firmly established; namely, that the Lords would not reject financial measures, which must be regarded as belonging to the province of the House of Commons alone. This was the rock on which the Lords foundered. In their policy of obstruction of the legislative programme of the Liberal Government of 1906 they rejected Lloyd George's 1909 Budget. This was the opportunity for the introduction of the Parliament Bill, and for its passage by getting a mandate for it from the country and the agreement of the Crown to undertake, if necessary, coercive creation of Peers. The powers of the House of Lords thus came to be limited in their modern form first, because the Lords, out of their lack of sympathy for a non-Conservative Government, had refused to agree to legislation that a popularly elected Government had passed; and second, because in their zeal they had ventured beyond the limits even of the generally accepted constitutional position as regards their own powers. The Liberals not unnaturally took the view that there was room for a reform of the House of Lords, and the preamble of the Parliament Act gave notice that this question would be raised. The outbreak of the 1914-18 war caused the matter to be postponed, but in 1917 a Conference under the Chairmanship of Lord Bryce was set up to make recommendations for reform. Its report was interesting and its recommendations were ingenious, but they were never acted upon.

Interest in the question of the reform of the House

¹ There was, of course, a major dispute on the passage of the 1832 Reform Act, and the Lords were by no means inactive over the next quarter of a century; but the situation altered radically after 1836.

of Lords is difficult to sustain in the absence of an actual occasion of controversy with the House of Commons; and it is a major obstacle that when proposals are made for altering its composition, the kind of House of Lords they would produce seems to cease to be the kind of second chamber we can imagine ourselves having. We certainly do not seem to want a second chamber just for the sake of having a second chamber. We do not want a powerful body like the American Senate that would be a rival to the House of Commons; and we see no point in inventing any new sort of weak second chamber. So the House of Lords remains unchanged, and may well remain so for a long time to come if it avoids further large-scale quarrels with the House of Commons. It is still predominantly Conservative in character, and some have seen in that the possibility of trouble for a Labour Government. It is clear, too, that the House of Lords has not tended to acquiesce in the notion of itself as any mere appendage to the British system of government: it claims a real part in the government of the country and from time to time makes a gesture designed to make it clear that it takes such a claim seriously. So far, however, this has not been carried to the point of causing any major difficulty for the Labour Government that took office in 1945. That Government did, in its first session, suffer numerous defeats in the House of Lords in the Committee Stages of Bills, but no serious conflict resulted because the Lords did not push their disagreement too far, and the Government made many concessions in order to smooth the passage of Bills. The position has remained broadly the same in the Labour Government's second session, although it appeared to sharpen somewhat because action in the Lords has been described as designed to remedy the "unfair" use of "guillotine" in the Commons. The Opposition majority in the Lords has, however, eschewed all intention either of throwing out bodily Bills whose principles have been accepted in the Commons or of subjecting such Bills to "wrecking amendments"; and when the Commons rejected amendments to the Transport Bill that had been carried in the Lords against the Government, the Leader of Opposition in the Lords declared (July 1947) that there would be no

question of attempting to reinsert them, although some additional amendments would be sent back to the Commons.

What is the true position, then? Assuming that even with a Labour Government the House of Lords will not attempt to assert itself against popularly endorsed policy, can it really have any life in it at all? Is it not in fact and in spite of all pretences just a useless survival? I think such a conclusion would be false, for the present position of the House of Lords is not really based upon its purporting to be, as it were, one half of the legislature. The House of Lords should really be regarded as being one of those institutions maintained in Britain after the manner of second and third slip at cricket. Such bodies do not really have a separate function peculiar to themselves other than that of catching up loose ends. But this is far from being an unimportant function, and it is especially characteristic of the flexible type of government the British try to operate. Our party system has been adjusted to the necessity for reducing to a minimum the choices of policy to be faced by the public. Efficiency demands no less; but if attention is paid too narrowly to efficiency there is a danger that the resulting system of institutions may be over-rigid, and finally unrepresentative; for however much parties may influence public opinion and canalise it, there are always matters that refuse to fit into any strict party divisions; there are also always individuals and groups with special interests and their own spontaneous contributions to make to the political objectives before the nation. It is only right that this should be so: we do not want a passive public and active parties, for the parties themselves must be ready to learn from time to time and not be encouraged to think themselves infallible, while the public should be able to feel that it is worth while to be alert and critical. The main case for the House of Lords today is, then, that it can try to do some of what the House of Commons has not the time to do and is not designed to do. Thus we find some legislative measures—especially, although not exclusively, of a non-controversial (that is, non-party) nature—initiated in the House of Lords; and we find time allowed there for the debate of important matters of public policy for which the

House of Commons cannot provide.¹ We also find revision taking place there that is accepted readily in the House of Commons.² That we recognise the value of these services is reflected in the attitude we adopt towards the granting of Peerages. In spite of the natural tendency to look askance at those Peers whose claims on public recognition do not appear to be demonstrably justifiable by reference to clear and definite services rendered to the public, we do still consider that a Peerage is not just an empty label: our very indignation if we consider a Peerage undeserved is proof of that; and there is further proof in the calibre of the majority of the men who are raised to the Peerage. They include former members of Parliament, ex-administrators and others distinguished by outstanding careers of various kinds, and in consequence the modern House of Lords has added to the party representation of the House of Commons an element of vocational representation that gives weight to the counsels of at least the well-established interests in the community. The quality of debate in the House of Lords compares very favourably with that in the House of Commons; indeed, it can, in some respects, be superior, since the smaller attendance in the House of Lords and the fact that the House is not elective reduces the temptation to "play to the gallery".

This, then, is the rôle of the House of Lords if our political system continues to work as it has been working. It is still, of course, true that very many more of those entitled to sit in the House of Lords have natural sympathies with the Conservative Party rather than with the Labour Party;³ and it would be possible, at any rate for a short time, for the House of Lords to be a real thorn in the flesh of a Labour Government. But this is less an institutional than a party matter. When the

¹ Thus between August and December 1945, for instance, the House of Lords discussed the following topics *amongst others*: Germany's Industrial Resources, Civil Aviation Policy, Treatment of Japan, Foreign Service, Housing, Demobilisation, Road Casualties, Hydro-Electric development in Scotland.

² Even on the Transport Bill the majority of the Lords' amendments were accepted by the Government—and therefore by the House of Commons.

³ The Labour Party has suffered doubly from this—first because of the mere fact of perpetual minority, second because its minority is so small: there are barely enough leading Labour Peers to act as pilots for all the measures it puts up to the House of Lords.

Lords made things difficult for the 1906 Liberal Government, they were working hand in glove with the Conservative leaders of the day—and some Conservatives were then, and later in the matter of Home Rule for Ireland, inclined to claim the right to interpret the Constitution as it suited them. If a party is in this mood, then not only a single institution, such as the House of Lords, but the whole range of our institutions, may become involved in crises. The nature of the necessary safeguards is clear: it is for the parties to discipline themselves and their sympathisers, and it is for the public to see that they do.¹

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This brief discussion of the House of Lords makes it easier, I think, to appreciate the position of the Crown. We can readily understand that this is certainly not what the language of ceremonial would imply. The monarch is almost entirely concerned in the form and not the substance of acts of government, and his office is, as such, a technical necessity; if we did not have a King or Queen, we should have to have a President, or some such other official. This may be illustrated from the position of the monarch in relation to the formation and dismissal of Governments. The choice of Prime Minister was formerly a function of the King derived from his ancient rôle as bearer of the executive power; but today the King's choice is hedged about by conventions. The Prime Minister must be

¹ Since the above was written, the question of the position of the House of Lords has rather unexpectedly—and, to the minds of many, rather gratuitously—become a matter of controversy. The Labour Government has proposed to reduce to *one* year the Lords' "suspensive veto". In so doing, their tactics have differed from those of the 1906 Government, in that the reduction has been proposed *before* the emergence of any major issue, or of any clear sign of an impending major issue, between Commons and Lords. The Opposition has made the most of this point, but has also maintained that if House of Lords powers are reviewed, then House of Lords reform must be considered too; and there seems to be some possibility that the Government will compromise. There are so far no means of forecasting the outcome of these proceedings: we may be left with a Second Chamber to which, with very minor adaptations, the greater part of the comments of this Chapter will continue to apply; or we may acquire a brand-new political institution. It can only be hoped that whatever is now done will not be marred by being done at one of two extremes—too casually, or with too much heat. —W. H., February, 1948.

at least a member of one or other of the Houses of Parliament, and recent practice suggests that he must, in fact, be a member of the House of Commons. In the case, too, in which a single party has a clear majority at a General Election, and there is a recognised leader of that majority, that leader must be chosen as Prime Minister. Similarly, on the defeat and resignation of a Government, the King must send for the leader of the Opposition. If a majority party has not a recognised leader, or if no party has a clear majority, then the King may have to exercise his own judgment and choice. Before so doing, however, he must be careful impartially to take the views of political leaders, and his sole aim must be to secure a Government acceptable to the House of Commons and the people; he must have no personal political aims. His residual discretionary power is that simply of a broker. As a corollary, of course, it is incumbent upon political leaders to give him all assistance and neither to exert undue influence on him nor to seek or avoid office for merely tactical reasons. Similar considerations apply to the ending of a Government's life. For over a century now the King has always granted a dissolution when advised by the Prime Minister. It has been argued that he could refuse a dissolution in certain circumstances, but there is no agreement as to just what the circumstances are that would warrant a refusal. On the whole, it may be taken that the standing convention is undoubtedly that the King's agreement to a proposal for dissolution is, and should be, automatic. It is still clearer that the King cannot dismiss his Ministers; this has not occurred since 1783. It can further be accepted that the King cannot insist on dissolution.

One of the reasons why we retain the House of Lords is that we have always had one; similarly with the monarchy. Save during the Cromwellian Protectorate, we have never been without it. And both the Protectorate and the experience of some other countries have taught us the lesson that whatever the disadvantages of monarchy may be there can be considerable disadvantages if we have another form of "Head of State" who is at the same time "The Executive". The American President is in this position, and for that reason certain governmental difficulties can arise in America that cannot

arise here. The President is separately elected and, therefore, commands a popular following separate from that of Congress. The executive power is vested in him, and he is excluded from Congress. Yet Congress has the legislative power. Thus there can be a deadlock between President and Congress, and even without such an extreme situation arising, the activities of government tend to be more cumbersome than they are here. In the third French Republic this situation was avoided. There was a President, but there was a Cabinet system also, and the executive was in the legislature. But there were some other difficulties. The Constitution provided for the exercise of a power of dissolution by the President. On the only occasion on which a President sought to make use of this power, however, he conceived it as a personal power to be used irrespective of the advice of his Ministers; and the result was that dissolution fell into disuse. The French President then came to be regarded very largely as an ornamental figure. Perhaps this was theory rather than practice; but the practice of Presidents entering into the business of government became, in France, a matter of meddling in politics rather than of having a definite and positive constitutional rôle. So that the French President differed little from the British King save that he might be a more or less active politician.

We have seen little in these models to make us wish to change our system. Nor have we had very much reason, in the last hundred years, to contemplate changing it. We had our main constitutional quarrel with the monarchy in the time of the Stuarts, and the principles of the Revolution Settlement underlie the Constitution as it stands today. In the eighteenth century the position of Parliament was further consolidated and the independent political power of the monarch was thus in decline, even before the power of Parliament began, as a result of the franchise reforms, to become the power of the House of Commons and Cabinet resting upon popular support. The rôle of the monarch in these conditions was not clearly understood by Queen Victoria or by the earlier of her advisers, but it nonetheless became settled in the course of her reign. It was to be non-partisan; the monarch, moreover, would not actively intervene in any political matters, and decisions in

such matters would always rest with the Cabinet; the monarch, again, would not have a free hand in choosing either a Prime Minister or the members of the Cabinet, for that would be dictated by the state of the parties in the House of Commons; decisions regarding the length of life of Parliament would also rest with Ministers. The monarch, indeed, would act upon personal initiative only on the rare and exceptional occasions when there was no one source of advice that was the clearly authoritative one to be followed.

As a result of these developments we have had the advantage of continuity in constitutional forms; apart from separate and somewhat scattered measures defining new positions in regard to particular aspects of the royal power, we have not been involved in any large-scale reorganisation of the powers of the monarch. Yet we have reached a measure of agreement about that position that is even more unanimous than that attained in respect of the House of Lords, and the possibility of political misuse of the monarch's position is now scarcely worth considering. In addition, just because we have retained the old form of the prerogative, with the legal conception of its attachment to the "Crown" rather than to the actual individual monarch, we have been assisted in regulating certain legal relations: the Crown is the formal bond of unity in the Commonwealth of otherwise independent Dominions. The Crown is also the legal entity in the name of which both Ministers and departments act. At Law it can be used to protect public as against private interests without the introduction of any conception of an all-powerful and infallible "State". We are at the same time better provided than most countries for dealing with the ceremonial side of public life. Again, with both a monarch and a Prime Minister too we do not invite the addition of any further offices that might develop dictatorial tendencies.

CHAPTER VI
THE PARTS OF THE
ADMINISTRATIVE MACHINE

i

WE have been concerned, so far, with the general supervision and direction of government in Britain. We need now to look at the work that goes on beneath this level. We are turning from the activities of a few hundred men in Westminster to those of several thousands, in Whitehall and up and down the country. The work of this army is manifold in its variety. The type of administrative organ involved is itself not uniform and the method of performance of work varies both in accordance with the nature of the work itself and with the type of organ involved. Staffing is a problem for all of these parts of the administrative machine, and the solutions they find to it are not uniform. Apart from the general supervision exercised by Parliament and the Cabinet, some control and co-ordination has to operate inside the administrative machine itself; and the nature of the powers exercised within the separate parts of the machine constitutes a considerable subject. I will deal with these topics in the present chapter and the next one.

ii

We can for our present purposes roughly group the various types of administrative organs employed in this country as follows:

- (a) Ministerial departments,
- (b) Semi-independent administrative organs,
- (c) Independent organisations with "recognised" administrative functions,

- (d) Consultative and advisory bodies,
- (e) Decentralised agencies.¹

It is typical of the British structure of government that it should be possible to make such a division, and it represents the characteristic attitude of refusal to attempt to rigidify political life. One type of body has seemed useful for one purpose and another for another purpose; we have therefore not stuck to any one type. On the other hand, we have not fallen into the temptation to invent a special type for every function that has had to be performed. Each type has itself had a certain amount of flexibility and has been adaptable to different kinds of jobs. We have, moreover, allowed the work of the different kinds of body to overlap in some places, and we have never subjected the whole machine to anything in the nature of comprehensive overhaul. How far that has resulted in confusion that would have been better avoided we must later consider.

(a) THE MINISTERIAL DEPARTMENTS.

These are what may be called the standard British administrative agencies. Their distinguishing characteristic is that each is headed, either directly or through some "parent" department to which it is subordinate, by a Member of Parliament who is responsible for it and may be questioned about it in one of the Houses of Parliament. A further uniform character is that they are all staffed by "regular" Civil Servants. They are also under supervision, as we shall see, by the Treasury. The general conception of them is as essentially administrative bodies: that is, that they are not there primarily for the initiation but for the carrying out of policy. Of course, as we have seen, at least their high officials have much to do

¹ This arrangement does not give a separate place to the local government system because I am here dealing with local government inasmuch as it forms part of the nationally directed administrative machine. This, of course, by no means brings out the full significance of the work of the local authorities, whether in respect of its magnitude or in respect of the degree of local self-government it involves. Both of these aspects are too easily under-estimated today: unfortunately there is no room to deal with them here; but some references for further reading are given in Chapter IX.

with the formation of policy; and we shall see later that they are given powers that are explicitly legislative and judicial in character. But their policy-forming work is a matter between themselves and Ministers; it is not, as it were, part of their *terms of reference in relation to the administered public*; and the legislative powers they are given are, at any rate in theory, essentially subordinate, and subject to the control of Parliament; while their judicial functions are strictly incidental to their main work of administration. They are also open to having all or any of their powers removed at a moment's notice by Parliament.

The Parliamentary head of the kind of department we are discussing may be known as a Secretary of State, a First Lord, a President, or a Minister. The Post Office has a Postmaster-General. These names are of little significance today. The first is the oldest, and that there are now several Secretaries of State simply reflects the fact that as the business of State developed in complexity the office of Secretary, which was formerly that of the one chief administrative official, had to be subjected to successive sub-divisions. The First Lordships are similarly ancient offices. The Presidencies were more recent inventions and dated from a period when it was conceived suitable to have a department headed by a Board rather than by an individual. This system fell out of use for two reasons: it was easier to pin responsibility to an individual than to a Board, and there was a tendency for the majority of members of Boards to have nothing to do. In most cases former Boards have become Ministries: for instance, the old Local Government Board is now the Ministry of Health, and the Ministries of Agriculture and Fisheries and of Education were both formerly Boards. Other Boards are sub-departments: for instance, the Board of Customs comes under the Treasury. It will be borne in mind, of course, that not all of the parliamentary heads of the departments will be members of the Cabinet, and that some members of the Cabinet will not be heads of administrative departments.

It is not possible within the compass of this book to give a thorough description of the work done by each department. It is worth while, however, to glance at the departments

arranged in groups by reference to similarity of work undertaken, and to consider one or two of the departments whose names do not quite clearly indicate the exact nature of the work they perform.

The main departments may be grouped thus:¹

(1) *General Departments:*

The Treasury.
The Home Office.
The Scottish Office.

(2) *Economic Departments:*

Ministry of Agriculture and Fisheries.
Board of Trade.
Ministry of Food.
Ministry of Fuel and Power.
Ministry of Labour and National Service.
Ministry of Supply.
The Post Office.
The Ministry of Works.
Ministry of Town and Country Planning.
Ministry of Transport.
Ministry of Civil Aviation.

(3) *Social Welfare Departments:*

Ministry of Education.
Ministry of Health.
Ministry of National Insurance.
Ministry of Pensions.

(4) *Imperial and Foreign Departments:*

The Foreign Office.
The Colonial Office.
The Commonwealth Relations Office.

¹ This is not a comprehensive list. Other departments and sub-departments are mentioned in the Appendices (especially Appendix E) and elsewhere. A full list is published at intervals by the Stationery Office under the title "His Majesty's Ministers and Heads of Public Departments."

(5) *The Armed Services:*

The Admiralty.
The War Office.
The Air Ministry.
The Ministry of Defence.

As might be imagined, this arrangement is not quite watertight, and applies only to the major, or primary, functions of departments. The Home Office, the Ministry of Labour and National Service and the Ministry of Town and Country Planning have, for instance, a distinctly welfare side to their activities, as, indeed, has also the Ministry of Food; while the Ministry of Defence links with the Ministry of Supply as well as with the departments concerned with the Armed Services.

Of the general departments I will deal with the Treasury later. The Home Office has a considerable variety of functions, partly because it is one of the oldest of the departments, and partly because it has been useful to have one department which could make a practice of accepting functions that would be awkward to fit in elsewhere. Its main functions, however, and its oldest, have to do with questions arising in relation to the maintenance of civil law and order (for instance, the supervision of the licensing laws and the registration of aliens), and for that reason it undertakes much work that is legal in character. The Scottish Office is really a series of small departments rather than one department: it co-ordinates, for instance, the Department of Agriculture for Scotland, the Scottish Education Department and the Scottish Home Department, the functions of each of which may easily be inferred from its name.

Of the economic departments, the Board of Trade is that primarily concerned with the country's industry and commerce, both as regards internal and overseas trade. For that reason it has had a particularly important rôle in recent times in connection with the general rehabilitation of our economy in the aftermath of hostilities. It is through the Board of Trade, for instance, that export policy is managed on the production side (on the currency side of foreign trade, of course, the Treasury is also closely concerned), and it is also

through the Board of Trade that the policy of location of industry, including the designation and operation of "development areas", has been conducted. The Ministry of Food came into existence only in the course of the late war, and has persisted because of the persistence of food shortage; it is still too early to hazard a guess as to what its future is likely to be. It should be noted, however, that in addition to ensuring sufficiency of food supplies and their equitable distribution it has to give close consideration to the problem of getting the right food in suitably balanced proportions from a dietetic point of view; this is a positive function that the nation may not wish to surrender even when food is available in larger quantities, and the same applies to the degree of control exercised by the department over the food industry generally. The Ministry of Fuel and Power is another wartime creation, which covers, *inter alia*, the field formerly covered by the Ministry of Mines, but it also is concerned with the manufacture and distribution of gas and electrical power. The Ministry of Labour and National Service has become even more important recently than it was before because of expansion of functions. Most people were familiar with it before the war rather as a Ministry of Unemployment. During the war, however, the problem was scarcity of labour, and the words "and National Service" were added to the Ministry's title because it had to apply principles similar to those of conscription to the personnel of civilian industry and commerce.¹ It also developed a welfare side since it took over the administration of the Factory Acts, which was formerly one of the activities of the Home Office, and began to operate an Industrial Welfare Department. The Ministry of Supply was set up just before the war. It supplied mainly the needs of the Army, as the Admiralty continued to undertake its own supplies, and there was a separate Ministry of Aircraft Production to supply the Air Force. The Ministry of Supply, however, also dealt with the supply of articles in common use by all three services (such as clothing, motor vehicles and medical supplies), and it controlled the production of almost all raw materials (iron

¹ It was also concerned with conscription for the Armed Services as such by way of control of releases and deferments.

and steel, chemicals, cotton, timber, etc.). In virtue of its scope it became the department most intimately concerned with many sections of the engineering industry and with almost all the basic industries (other than such obvious exceptions as, for instance, coal). With the ending of hostilities, steps were taken to bring about an amalgamation of the Ministry of Supply and the Ministry of Aircraft Production. The peacetime function of the new compendious department is wider than just maintaining "war potential". Certain functions have been transferred to the Board of Trade, but others have been retained (for instance, iron and steel), and the Ministry of Supply will have to work beside the Board of Trade on general problems of industrial production. The Ministry of Town and Country Planning is a further wartime creation. Its functions are indicated by its name, but its existence illustrates what happens when a particular field of action increases in political importance. Town and country planning had been a matter for the Ministry of Health, but in view of the importance of this question in post-war reconstruction it was considered advisable to separate the administrative work connected with it. In the first place a transfer was made to the Minister of Works and for a short time there was a "Ministry of Works and Planning". It was then decided that the functions had better be given to a Minister with no other responsibilities, and at that point the new Ministry was created. The Ministry of Civil Aviation needs distinguishing in view of the aircraft production responsibilities of the Ministry of Supply; its duties are to deal not with manufacture but with the development of air lines and routes, a question which involves international negotiation as well as internal administration.

Amongst social welfare departments the Ministries of Education and Pensions need no explanation. The Ministry of Health deals not only with all questions of public health (in the widest sense, including, for instance, water supplies and housing), but is also the central department most closely concerned with the local government system (of England and Wales; the Scottish local government system is supervised by the Department of Health for Scotland). The Ministry of National Insurance

was created to supervise the operation of the schemes of social insurance associated with the "Beveridge Plan", and its functions represent developments of older functions formerly placed with other departments: for instance, the Ministry of Labour and the Ministry of Health.

Of the departments connected with the separate Armed Services, the only one requiring separate notice is the Admiralty, which continues to be a production as well as a Service department. The Ministry of Defence was set up in 1946 with the function of relieving the Prime Minister of responsibilities he had formerly undertaken in regard to the inter-relation of the three Services and their supply. It is not in full control of national defence: this falls to the defence committee of the Cabinet. The Minister of Defence acts as deputy chairman of this committee, however, and he has in addition the function of apportioning resources to the Services in accordance with the strategic policy of the defence committee (including research and development and the co-relation of production programmes), the settlement of questions in regard to which a common policy for the three Services is desirable, and the administration of certain inter-Service organisations: for instance, Combined Operations Headquarters and the Joint Intelligence Bureau.

If the functions just described are considered along with those of the other more familiar departments, it will be appreciated that the major part of the central work of government is undertaken by the Ministerial departments. Twenty years ago it would have been unnecessary to draw attention to this point. It is necessary today because the proliferation of other types of administrative agency, and the prominence that has attached to some of these agencies, have partially obscured the pattern of British government. Bodies like the Cabinet Secretariat, planning organisations, and the Public Corporations at which we will look in a moment, have appeared to some to be, because newer, more "significant", as the jargon of the day would put it. But while such bodies may be significant of certain recent trends, they represent no revolution. They relate, too, only to certain aspects of the work to be done, and they cannot, so long as the principles of British government remain what they

are, ever, just the Ministerial departments and their work. The system of Ministerial departments, along with the Parliamentary system, constitutes the central guarantee of responsible government; and so long as we are concerned to retain responsible government the Ministerial departments must remain focal centres: in the contacts between them and Ministers must continue to emerge the substance of the most important administrative decisions, even if the final form of such decisions is affected by separate co-ordinating agencies, and their details are affected by bodies in varying degrees of independence of the Ministerial departments. It is therefore essential to the understanding of British government to know how the Ministerial departments work.

Their methods are in one respect similar to those which have to be adopted in any large-scale organisation: the work is broken up and undertaken in specialised sections to permit of division of labour. Each has also, of course, more generalised sections: for instance, a secretariat to deal with matters of policy, an establishments division to deal with all questions of staff, and a finance division devoted solely to questions of finance. The system of breaking up work operates, however, inside each of these divisions as well as amongst the other divisions of the department and inside each of them in turn. The successful conduct of the work thus requires joint action and team working, and it is the responsibility of the higher officials to ensure that these are forthcoming. They design the organisation and methods employed and must keep an eye on them and see that they are adequate. But even this work must be broken up. Commonly the secretariat of a department has the function of seeing that policy decisions are implemented—that is, that the work of individual sections conforms with what the Minister, and perhaps the Cabinet, understands as the principles on which the department is working. The establishments division has, amongst other functions, that of seeing that the right job is being done by the right man. An organisation and methods division may give technical advice on the performance of specific tasks. The finance division is there to see that the requirements of the Treasury are duly met. But these divisions are not automatic mechanisms. Their efficiency

depends upon the efficiency of their own personnel and upon that of the other divisions with which they have to deal. The pronouncements of the head of the secretariat may be misrepresented by a typist's error overlooked by a clerk. For authority to pass firmly from the head of a division to the lowest grade filer or indexer, the links of the chain must be dependable at every point; and the head of a division cannot personally deal with this. He must assure himself of the efficiency of his immediate lieutenants. They in turn must assure themselves of the efficiency of their assistants, and so on down to the most junior officer with any supervisory duties. And the secretariat, establishments and other generalised divisions must depend upon the co-operation of the other divisions for the final efficiency of their own work. Officers of the secretariat cannot personally ensure that every junior officer in an executive section handles cases correctly. The establishments division must rely on heads of sections in other divisions to discover the aptitudes and ineptitudes of individual members of staff. The division of labour does not involve pre-established harmony. It is not a system in which everyone can stick to his own job and ignore every other person's job. Such a position of absolute separation is as impossible here as it is in relation to the legislative, executive and judicial powers of government. The individual members of a department have certain separate primary responsibilities, but the proper performance of these responsibilities involves each one of them in concern with and assistance in the fulfilment of the responsibilities of the other members of the department.

This is most commonly viewed from another direction. Critics point out that there is a constant possibility that members of one section of a department may have little knowledge of the nature of the work done by another section of even the same division of the department, and that therefore it is not surprising that departments lay themselves open to the allegations that their work is slow and that they are prone to "pass the buck". Not all such criticisms are justified, however. No one would object if, when they left an order for meat with the grocer, he passed it on to the butcher. But this is frequently what happens in contacts between the public and government

departments. The public do not always know just exactly what the functions of a department are. Even when a member of the public addresses himself to the right department he may do so in such a way that his request (and it is usually a request) is first handled in the wrong section of it. This is why government departments and other large organisations so frequently resort to a system of forms when dealing with the public: only by means of a form can it be made, not certain, but as nearly certain as possible, that essential information will be given and irrelevant information left out. But some members of the public consider that the filling up of forms is a symptom of "red tape" which is caused by government control, and forget that they have to fill up a form if, for instance, they wish to send their luggage in advance on the railway¹, or pay money into their bank, or compete in football pools.

Another criticism of the working of government departments may perhaps go deeper: it is alleged that one of the chief reasons for delays is not simply that government machinery is complicated, but also that officials are reluctant to assume responsibility. This relates in part, of course, to the very fact of complexity: sometimes members of the public do not realise that they are asking comparatively junior Civil Servants to take decisions that they would not ask the junior members of the staff of other organisations to take. Nonetheless there is something more in the criticism. First, in spite of the quite considerable trouble often taken within a department to ensure that its policies are understood by all its members and that they know the reason why they are doing the particular job they do, there are still frequently many cases in which interest is not taken in the work of the department as a whole and in the inter-relations between its different parts. Secondly, there are, at all levels within a department, fairly sharp limits to the authority of each official. This occurs not only because such a large machine must inevitably have a hierarchical organisation and a discipline in some ways akin to that of an army: there is a further special reason in that the Government is working all the time in the full glare of publicity, and criticism is never far round the corner. Any minor matter, occurring at the lowest

¹ This was written before nationalisation.

level of the department, may come to involve political difficulties for the Minister. Even at the top of the department it is sometimes necessary to consult the Minister before giving a decision on a new type of case, because there are always occasions on which it cannot be foreseen which way the Minister, or perhaps the Cabinet, is going to jump. The further down the scale inside the department we go, the more is uncertainty likely to prevail as to what is the right action in cases for which there are no clear precedents. The officials concerned with such cases will quite naturally refrain from acting until they have the authority of the officials next above them: and the more unusual the case, the more will several sections be drawn in, and the further up the hierarchy will it travel. These two reasons do induce an aversion in some officials to the taking of initiative. Coupled with certain aspects of the conditions of service (which I will consider later), they can produce a situation in which a timid or lazy official can perform his duties according to the letter, passing on the strain of taking decisions to the stronger spirits, who in the process become overloaded with work.

(b) SEMI-INDEPENDENT ADMINISTRATIVE ORGANS.

I use this description to cover various types of administrative bodies that may be very similar in structure and functions to the departments we have been considering, but which differ from them because in one way or another they are freer from control by Ministers, Parliament, the Treasury, or all three. These bodies are, however, often very different from one another, and in the terms of their relations with Ministers, Parliament and Treasury, and they can be classified only very roughly. Some apparently semi-independent organs are really sub-departments of ordinary departments: an example of this type of organ is the Ordnance Survey Department. The appearance of independence arises, in this case, from the fact that the work involved has long settled down to an accepted routine and is unlikely to give rise to any questions for Parliamentary consideration. More or less the same applies to certain other bodies that are less clearly attached to government departments, such as, for instance, the Charity Commissioners. These are older forms of the semi-autonomous agency, and

they are not, by themselves, very likely to cause much comment. In other cases, however, special administrative bodies have been created that have been free from the first from continuous higher control because it has been the deliberate intention to permit them to operate without constant parliamentary inspection and criticism. The "public corporations" have commonly assumed this form, and the main arguments used in their case to justify the arrangement adopted have related to the nature of their work. Since this has generally lain in the field of public utility, in which the public corporation has taken the place of previously unregulated private enterprise, it has been held that there has been much to be gained by introducing as little structural alteration as possible. At the same time, it has been considered that "managerial freedom" is essential in this field and that therefore a good deal of the actual policy as well as of the control of reorganisation must be conducted by the public corporation itself. Governments, moreover, have been anxious to obtain the services of men with experience in the industrial or commercial field concerned, who might be unwilling to become Civil Servants or to have to cope with the complications of administration carried on with a constant eye on Parliamentary and public reactions. A further consideration has been that the functions involved have required special methods of accounting; and, in addition, it has been desired to avoid "political pressure". These considerations have applied in varying combinations to such earlier bodies as the Port of London Authority, creations between the two wars such as the London Passenger Transport Board and the Central Electricity Board, and to such recent creations as the Coal Board; while in the case of the British Broadcasting Corporation there have been further special considerations relevant to a service with mixed potentialities for education, entertainment and propaganda. The constitutions of these bodies have varied considerably, and there is no standard form of the public corporation, but there has been a tendency to maintain that the greater the degree of freedom from ministerial and parliamentary control, the greater the advantages of the device become.

The device can be used, of course, for a variety of functions, ranging from the mere co-ordination of independent commercial

undertakings (such as was the case with the arrangements for electricity production between the wars) right up to the completest form of nationalisation (as in the case of coal). It is also possible to use it even when the subject-matter of administration is not in the field of public utility, or when it is, but public enterprise is pioneering and not succeeding private enterprise. In a period like the present, when the whole of the economy of the country requires overhauling, and a Labour Government is likely to aim both at increasing public control of industry and at new departures in other services, this type of body will multiply, partly because it has become fashionable, and partly because it affords relief to overloaded government departments. It is therefore useful to give some consideration to its merits and defects, especially in the "free" or "independent" form in which it has become common to praise it.

I think that the public corporation is best conceived as one transitional form of administrative agent in a period when all such agents are in transition. It has arisen in relation to new activities of government in which it has clearly been an advantage to gain the assistance and goodwill of men with experience in the new fields involved. Thus, in any short run, it may well be unavoidable to allow a considerable measure of independence to the agencies in which such men work because the alternative would be to have no extension of government control at all. But, obviously, complete independence would not make sense; and, indeed, even the most ardent critics of control admit that ultimately Ministers and Parliament must be supreme. Are there, then, any other arguments which would justify a degree of freedom for public corporations that ought to be denied to the standard government department? There seems to be nothing by itself in the argument from maintaining the structure of an industry: during the 1939-45 war many of the production industries were successfully controlled by ordinary Ministerial departments (although these had the advantage of assistance from temporary commercial and industrial personnel). Nor does the device provide in any way that could not be developed for the Ministerial department for the exercise of discretion. While if the fact that production is involved requires special provision for accounting, there is no

reason why that should not be catered for without in any other way departing from the normal requirements and responsibilities laid upon Ministerial departments. There remains the question whether the public corporation device is necessary to avoid "political pressure". Sometimes it is held that what is required is a "removal from politics" of the administrative function involved. But, on the one hand, it seems to be by no means proved that only by having a semi-autonomous body can such a removal be maintained: the Post Office is organised on the old-fashioned departmental model, yet it does not feature in politics very much;¹ while, on the other hand, it is questionable whether it is possible to remove some matters from politics, or desirable to try to do so. The mere fact that one Government is able to make a particular arrangement for an industry or any other subject does not automatically effect a removal from politics. Political matters will remain political so long as there are people who object to a Government's policies, and no constitutional or administrative device will by itself make anything non-political. Further, Government must either be in control or not, and if it is in control, then there will be a political side to what it controls. When administrative bodies are created as "independent" on the assumption, or the pretence, that thereby political responsibilities can be avoided, there are liable to be difficulties. The story of the Unemployment Assistance Board² is sufficient evidence of that: of all the matters that could not, in the 1930s, be "removed from politics", the means test perhaps came first; and the plight of the Unemployment Assistance Board was unhappy, as was that of the Minister of Labour.

The main argument is, however, that what is required in the particular fields in which the public corporations work is not absolute removal from politics, but removal from "interfering" political pressure. If a Minister has considerable formal powers of intervention in the affairs of a corporation, it is held, then there is a danger that organised interests will develop

¹ The same applies to most trading undertakings of local authorities. Attention should be drawn, however, to the "Bridgeman Reforms" in the Post Office. See W. R. Robson: *Public Enterprise*, p. 302 ff.

² Now the Assistance Board

pressure on him to influence the operations of the corporation, or, at any rate, that constant ventilation before Parliament will be a "distraction". Thus while it is admitted that there must be public accountability, it is suggested that this should be maintained in general through outside tribunals to which, rather than to Ministers, appeal can be made by members of the outside public, and by adequate arrangements for publicity in, for instance, the publication of accounts: only ultimately should control involve questions or debates in Parliament.

If there is anything in the "influence" argument, then one would expect it to apply equally to the standard government department also. In fact it seems probable that so long as there is ultimate Ministerial and Parliamentary responsibility the danger of political influence, if there is any, cannot be entirely eliminated; while any diminution of such responsibility would seem to be liable to open the door for other kinds of influence. The argument from "distraction" rests upon the conception of the operations of the public corporation as peculiarly "neutral", "specialised", or "technical". (Sometimes the fact that such operations are commercial seems to be held to make such descriptions appropriate.) I doubt, however, whether the matters with which public corporations deal are in fact any more neutral, specialised, or technical than those with which many of the ordinary government departments deal. It could quite well be argued that such departments might conduct their work better if they were less affected by parliamentary questions and debates; and perhaps Parliament should exercise self-restraint and interfere with such departments less: perhaps also it should establish more independent tribunals to work beside such departments.¹ If the sponsors of the "free" public corporation help to achieve this result their efforts will have been useful. It is possible to conceive a future for an integrated system of freer departments and controlled corporations, but not for the continuance of a dualism of departments in leading strings and public corporations over which Ministers have inadequate authority.

The general indications are certainly that the particular lesson as regards the control of public corporations has been

¹ See Chapter VII.

learned. The Coal Board, for instance, appointed under the Coal Industry Nationalisation Act, 1946, is appointed by the Minister of Fuel and Power, who makes regulations for the appointment, tenure and vacation of office of its members, the quorums, proceedings and determinations of meetings, and the Board's execution of instruments and mode of entering into contracts. He also gives the Board general directions regarding the exercise of its functions and must approve the lines it proposes to follow in preparing programmes for reorganisation or development involving substantial capital outlay. He must also approve plans for training, education and research. The Board must, in addition, give him such information or returns as he may require. Broadly, similar arrangements govern the constitutions of the British Overseas Airways Corporation and the Steel Board and those of other bodies recently projected, such as the Transport Commission and the Raw Cotton Commission.

The internal structure of these bodies does not differ greatly from that of the ordinary government departments save inasmuch as they can do without some of the organisation a government department requires. Each of them makes its own staffing arrangements or has them laid down for it; and the staff of some contains officials seconded from the Civil Service while that of others contains no Civil Servants. Their personnel has not, in most cases, been the subject of so much criticism as has that of the ordinary departments; largely, I think, because it has been less exposed to the continuous blast of Parliamentary comment.

(c) INDEPENDENT ORGANISATIONS WITH "RECOGNISED" ADMINISTRATIVE FUNCTIONS

In Britain today there is no sharp division between State and people: public and private functions shade off into one another in such a way that it is sometimes difficult to say where one ends and the other begins. These tendencies have operated in the administrative field equally with other fields of government. They assume the form in the administrative field of the harnessing to the official administrative machine of voluntary organisations for the discharge of particular administrative functions. There are two main methods. The first is the simpler:

it leaves a function that the State might be expected to perform entirely to a voluntary body. This occurs, for instance, in the organisation of the legal profession. In another form, this method associates the voluntary organisation more closely with the state, through the granting of public money and sometimes by other means. This system has operated to a great extent in the educational field. It was, in fact, by voluntary bodies that educational activities were first undertaken in England; and state interest in education first assumed the external form of grants in aid. So far as school education is concerned the system is today dual: some schools are operated directly for the State by the local authorities, others continue to be operated by voluntary bodies but with State aid and subject to State inspection. Higher education at the university level is, however, still entrusted to private corporations; for the British universities are not, as are the universities of some other countries, state institutions. Even here, however, the State has a contact through the University Grants Committee. One of the most important fields in which use has been made of this type of administration is in the fixing of wages, which is still predominantly a matter for the process of collective bargaining between employers' and employees' organisations, and where even the state appears as one employer amongst others and does not attempt to exert undue influence as regards its own direct industrial employees. There was also until recently another striking example of the use of voluntary bodies as State agents in the case of National Health Insurance, for there part of the administration of a State service was undertaken by the Friendly Societies. This example followed the same lines as the other cases mentioned in that the Friendly Societies did not undertake their insurance work for the first time at the behest of the State but had been undertaking similar work themselves long before it became a State-sponsored service. This is, indeed, the most common way in which voluntary organisations become state agents, although there might be cases in which an existing voluntary organisation could suitably be asked to undertake new or extended functions. Occasions are likely to be rare in which a Government could call voluntary organizations into being for the express purpose of acting as its agents.

Many people, of course, are not in the habit of considering that voluntary organisations that are outside state control, are undertaking public functions at all, and they tend to object when such bodies clearly become state agents by being brought under some measure of control. This reaction has been very pronounced, for instance, in relation to recent plans for hospitals. If we stop to reflect, however, we will notice that the sequence of events in such cases is usually that voluntary agencies first begin to operate a particular service in advance of general public opinion, that general public opinion then comes round to the view that the service is one that should be universally and uniformly available, and that governments have next to step in, whether by providing money or by setting up parallel services of their own, in order to fill the gaps of the system as hitherto voluntarily organised. It is after these stages that it is sometimes considered that it is necessary to take the entire service under government control, while retaining, perhaps, the co-operation of the voluntary agencies. Any view as to the exact point at which the process should stop is bound to be arbitrary. The leading argument against too much penetration by governments into such fields is, of course, that voluntary organisations possess the valuable attribute of spontaneity and are in a position to afford to experiment in ways that may not be possible for government departments with more rigid responsibilities. In each separate case, therefore, the task of a Government must be to find the right balance between universality and uniformity on the one hand, and the voluntary and experimental principles on the other. As we shall see later, this is a question that does not arise only in connection with voluntary organisations: it arises also in connection with local government; and local authorities which are less remote from the ordinary citizen than Whitehall departments may in some cases serve as a useful link between strictly departmental and completely voluntary administration.

(d) CONSULTATIVE AND ADVISORY BODIES.

Consultation of interests is another method that softens the impact of the administrative machine upon the public and makes it less alien. Sometimes it takes place informally, and at

other times it is put on a formal footing. It is practised both by Ministers and by departments and is used in connection both with the preparation of legislation and with the process of administering laws that are already enacted. In new fields of government action the question arises as to the parties that should be consulted. This often answers itself because in almost every aspect of social life with which government is likely to be concerned there are representative organisations which have come into being for the purpose of protecting specialised interests. Thus, in the field of industrial relations there are the trade unions and employers' federations; in local government there are the associations of the different types of local authority, and the local authorities themselves are representative bodies; there are similarly associations concerned with the welfare of children or of animals, with social services, with scientific and cultural matters and with numberless other questions. Sometimes, however, there are rival associations each claiming to represent the same interest; in some cases there are associations representing opposed interests. Governments must be certain that if they undertake consultation at all, it should be comprehensive, otherwise they will be accused of partiality. The departments have by now accumulated the experience necessary to let them know in most situations when plans for consultation are on the right lines; but there can still be awkward marginal cases.

The purposes of consultation may be various. A Government may genuinely seek information or advice, as when, for instance, it is not clear how great a demand there is for some reform, or in what shape reform is most wanted. In such a situation it might proceed by way of *ad hoc* enquiry through a Royal Commission or a Parliamentary Select Committee or a Departmental Committee; and the interested associations would then be represented by witnesses who would be summoned along with other witnesses chosen for their expert knowledge or practical experience of the matter under review. Such witnesses, or the associations they represented, might also be invited to submit, or might themselves volunteer to submit, memoranda containing statements of their points of view. On other occasions, and this would apply especially when some particular

legislation was definitely in mind, consultation might be undertaken rather because a Government wished to test reactions to its proposals. Consultation for this purpose is also frequently made by departments which have been given powers of rule-making under parent statutes, and they are thus sometimes enabled to make adjustments in their proposed rules without having to wait to incur unpopularity before doing so. A further purpose of consultation is to have a channel of communication through which a department may learn how some aspect of the administration for which it is responsible is working.

All of these purposes are likely to converge when an arrangement has been made to attach a standing Consultative Committee to a department. There are many such bodies, some very general, such as the National Production Advisory Council, and others specialised, as, for instance, the English and Welsh Advisory Councils on Education. Care will be taken, on such occasions, to ensure that all relevant interests are included in the committee, and it may be drawn into discussion of any of the concerns of the department, from impending legislation to the consideration of complaints about some decision taken by one of the department's officials: it may also be asked to consider and advise on particular points put to it by the department. Sometimes a committee may be given the function of undertaking enquiries and making suggestions of its own accord. Such committees are frequently provided with a secretary by the department, and the chairman may be the Minister himself, a high official of the department, or one of the members of the committee.

Recently a further consultative device has been operated by the Board of Trade in the shape of "working parties". The function of these bodies has been to examine the organisation of the main consumers' goods industries and their methods of production and distribution, and to make recommendations for increasing efficiency. In each working party one third of the members have represented employers, one third have represented Trade Unions, and one third have been independent members nominated by the President of the Board of Trade, who has also nominated an independent *Chairman*.

The criticism is made that all this business of consulting and asking advice is really only a façade, and that its real purpose is simply to make more palatable proposals that Ministers and departments intend to implement in any case. There are occasions when such a description is not unfair. Very often, for instance, it is known that there is really no alternative to a particular policy, but that there are more ways than one in which it might be presented (the detractors would say "sold") to the public: on such occasions prior consultation will prevent mistakes from being made. This is not objectionable, however. It might be so if the parties consulted were always content simply to acquiesce in whatever Governments had to suggest, and to confine themselves to casting about for methods whereby the ways of Governments might be made smooth. But they are not so docile, very largely because their members, while in one character they are government consultants, have primarily the other character of being representatives of interests with very definite points of view. Further, to do Governments justice, they are by no means simply concerned to force through their policies by fair means or foul; and even if they were, the knowledge that interested organisations in the country could make things hot for them and could supply the Opposition with ammunition, would be a strong deterrent. It may be assumed, then, that much of what takes place through consultative channels is quite genuine, that adjustments of actual policy as well as mere alterations of ways and means of presenting it arise because of such consultation, and that even when it has no other results than to make the consulted parties more familiar than they would otherwise have been with the rationale of the policy discussed, this is still a useful function, appreciated as such by the interests concerned, because they, being nearer to the centre of governmental activity, understand rather better perhaps than the man in the street that simple and popular solutions are not always the best solutions.

(e) DECENTRALISED AGENCIES.

We have so far been considering government organs according to the kind of function they perform or their type of composition, and the general assumption in each case has been

that the various types of organs discussed have been central in character, probably with offices or places of meeting in London. To complete the picture, we require to look at various parts of the administrative machine that do their work outside London.

First, there are actual government departments whose territorial sphere is limited to a part of the United Kingdom that does not include London, or even England. In the case of Scotland, as we have seen, there is a quite large-scale range of departments responsible to a separate Secretary of State, and these sit not in London but in Edinburgh, maintaining a relatively small London staff for liaison purposes. Wales has also a special Agriculture Board, Board of Education and Board of Health with offices in Cardiff. These are, however, sub-departments of the allied English departments rather than separate departments as in the case of Scotland. And for both Scotland and Wales certain departments centred on London function exactly as they do for England: these include, for instance, the Board of Trade, the Ministry of Labour and the Ministry of Transport. Neither Scotland nor Wales represents more than a limited measure, therefore, of administrative decentralisation. Certain other parts of the British Isles have, of course, a degree of legislative as well as administrative independence: for instance, Northern Ireland, the Channel Islands and the Isle of Man. Unfortunately, there is no space here to discuss the questions raised by these cases.

At the other extreme from the central department, which is itself decentralised, is the much commoner practice of setting up local offices for a central department which operates a main office in London. This is necessary particularly when the work of the central department involves actual contacts with the individual members of the public, and everyone is familiar with the local offices of the Ministry of Labour, Inland Revenue and the Post Office. In some cases such offices are grouped in districts or regions for purposes of co-ordination and of supervision. Such larger areas have also been used by other departments, which did not have local offices: for instance the Ministry of Health and the Ministry of

Education, as conveniently sized districts for the work of their inspectors.

The local government system itself represents in one aspect yet another form of decentralisation.¹ This is the subject of another book in this series, so that it would be out of place to describe it here. But the system of central government cannot be properly understood if we do not bear in mind to what an extent it is assisted by the work of the various local authorities and by the various arrangements that have been made for their joint action. This aspect of decentralisation has certain special features. The local authorities are unique as administrative agents in this country because they are popularly elected. Again, while their powers are strictly limited to what has been specifically granted to them by statute, they perform, within these limits, quite definite legislative functions for their own areas. By this method it is possible to maintain certain national standards in essential services such as public health and education while permitting local variations to suit local needs; and, as regards other services, it is possible to leave it to each locality to decide whether they will have them or not. The local authorities thus both take a load from the shoulders of the central government departments (inasmuch, for instance, as the lines of their work are laid down for them and their staff undertakes work that would otherwise have to be undertaken by central government staff) and at the same time they act as agents under the direction of the central government departments (inasmuch as they take decisions that would otherwise have to occupy the central government). They are also important means of linking the ordinary citizen more effectively with the administrative machine and of preventing administration from being too uniform and too impersonal.

In this aspect the local authorities really double, at a local level, the functions of semi-independent bodies and consultative bodies. There are further separate local bodies, not necessarily operating in the same areas as those of local councils, which are sometimes mainly administrative and sometimes mainly advisory or consultative. There are regional agents of

¹ See note (1) on p. 81. It must be emphasised that one aspect only of the local government system is being dealt with here.

central semi-independent bodies, as in the case of the Area Traffic Commissioners. There are joint organisations of local authorities for such matters as water supply and drainage, or town and country planning. There are area consultative bodies such as the Coal Consumers' Councils. Thus all the devices used centrally make their reappearance when we move away from the centre.

The importance of these mechanisms of decentralisation cannot be over-emphasised. Government must operate all over the country and not just in London. Some of it must not only be done on the spot, but must be done fairly on the spot, and what is fair in one place may be unfair in another. If departments in London already tend to be overloaded, they will become even more overloaded if they attempt to deal with all the shades of difference that arise because policies must be applied differently in different places. So at least some discretion must be exercised locally; and if the opinion of nationally organised interests should be consulted, then so should that of locally organised interests; while if there are men and women in the localities willing and able to undertake tasks special to their localities, it is all to the good that they should do so. The greater the pressure of work grows, the more must decentralised agencies be called in to assist. Yet this carries its own difficulties with it. The greater the use central departments make of decentralised agencies, the greater becomes the problem of keeping them in line. A whole field of central-local relations emerges. Methods must be found to prevent local variations of a common policy from becoming local policies based on differences of principle; but if such methods involve considerable organisation, then the benefits to the centre of the system of decentralisation are diminished. Again, the variety of tasks requires a variety of types of agent and of areas, but if there are too many kinds of local bodies and too many overlapping areas, the pattern of administration becomes obscure and confusion ensues.

Many people have already begun to wonder whether there is not room for the introduction of more order and coherence, and one remedy suggested is that of regionalism. During the recent war, one particular form of regionalism was

instituted, based on the system, already referred to, of having larger areas than those of local offices for the work of representatives of the central government departments. The geographical basis of the wartime regions was the division of the country into Civil Defence areas in each of which was placed a Regional Commissioner who would act with general powers on behalf of the Government in the event of invasion or other emergencies in which effective consultation with the Central Government became impossible. The various government departments that were most closely concerned with the war effort placed their own representatives, together with skeleton staffs, in these areas. Such officials would have been required to advise the Regional Commissioner had the type of emergency for which the system was devised actually arisen; but it was found that it was useful in other ways to have created these regional offices. Many questions affecting single firms, or local authorities, or trade-union branches, could be dealt with by a department's Regional Controller without having to come up to London for decision, and the Regional Controllers could also advise their departments on matters affecting their regions, much in the same manner as consultative committees. To increase the value of this aspect of regional work, then, Regional Boards were formed, on which representatives of local interests sat together with the official representatives in the region (and provision was made for the latter, when necessary, to sit by themselves as a "Regional Executive"). There thus developed a particular type of regional council which did very good work, mainly in the economic field and especially in matters of labour supply for war factories. During the height of hostilities these Boards were an interest mainly of the departments concerned with production and of the Ministry of Labour. With the beginnings of a reconstruction policy, their activities became of interest also to the Board of Trade, and when that department's distribution of industry policy began to be developed, it worked with regional Distribution of Industry Committees that were similar in structure and to some extent overlapped in personnel with the Regional Boards. The experience of working both the Regional Boards and the Regional Distribution of Industry Committees may be of considerable importance for

the future; but there will have to be much more experiment and reflection before we make the most, and the best, of decentralisation.¹

iii

One must picture the work of administration, then, as being carried out by a very complicated machine, and as frequently involving the co-operation, even in one field, of many of the kinds of agencies I have mentioned. The extent to which this is the case varies considerably, of course, according to the kind of work that has to be done. The machinery for international negotiation is, for instance, much less complex than that for internal administration, and in internal administration fewer administrative agencies are involved, for instance, in the operation of income tax (even although P.A.Y.E. has come to require the co-operation of employers as agents) than in the operation of the public health services. The machine is not complex for the sake of being complex, but is adjusted to allow for variety and flexibility at those points where the needs and interests of those affected are likely to vary. We have thus a considerable gamut of methods in use, from the simplest case (in which Parliament makes a law, a department carries it out, and that is the end of it) to the most elaborate case in which a Government consults before legislating, a department is assisted by consultative bodies and perhaps divides its work with other official and unofficial bodies, maintains its own regional or local officers, and is represented for some purposes by local authorities or works in parallel with them. One must picture all of these various methods operating simultaneously, with decisions constantly being taken at all levels and advice being sought in all directions, now by a Minister of his officials,

¹ It should be stressed that we are very far from having settled this question even in one of the older fields of decentralisation, that of local government. A Local Government Boundary Commission is at present grappling with the problems presented by the inadequacy of local authorities' areas; and there are many and conflicting views as to which services, or which parts of services, should be administered centrally and which locally. Nor have we quite cured ourselves of the notion that permanent settlements of these questions are possible.

now by a consultative body of a Minister, now by a semi-autonomous body of a department, now by a local authority of a semi-autonomous body. Yet only the smallest part of this work is ever heard of in the Press by the general public. It hears of the Acts of Parliament setting out new duties for a department, or setting up a new administrative organ, of the rules made by such bodies under the powers granted them by Parliament, sometimes of consultations, rather infrequently of meetings of local councils. A lot of enquiry is necessary to learn more so long as the question is approached from a purely general standpoint. But the complexity of the machine is designed to link it at some point or other, and with varying degrees of directness, with all those who are likely to have particular reasons for being more intimate with it, so that through the appropriate channels, which may be a local trade-union branch, a chamber of commerce, or a town council, closer contact can be made. And for every one, even if no other channel is available, there is the local M.P. On the local M.P., too, the other channels converge, and what is not normally reported may, if necessary, see the light of day through the medium of the parliamentary question.

The system is well designed and not wasteful, so far as the purpose of linking citizen and State is concerned. But does it divide the work to be done in a right and proper manner? This is really a double question. It means, first, is the work itself split up in a sensible way so that, for instance, nothing is left undone and nothing is done more than once? And it also means, is a reasonable balance of agencies always employed? That is, is there always consultation where there ought to be? Have local authorities just the right amount of say and not too much or too little? Are the right matters given Ministerial representation? Could we make more use of the semi-autonomous body? And so on. We have not, as a nation, ever had much time to consider these questions. Some official consideration has been given to certain central principles, most notably in the report of the Machinery of Government Committee published at the end of the 1914-18 war. That report, so far as it went, still gives the standard viewpoint on these matters: 'work should predominantly be divided according to the type of service

dealt with, Ministerial representation should be normal and other arrangements exceptional, the Treasury should be relied upon to effect much of the necessary co-ordination. But since 1919 there have been many developments and the last word has not been said. Nationalisation is a much more real problem now. We have become much more conscious of the extent to which consultation and decentralisation are parts of our system on which the future success of its working is likely to depend. I think it is almost certain that over, say, the next fifty years (assuming the trend of our politics continues, whatever Government we have, to be at least increasingly "collectivist" and very probably increasingly "socialist") we shall require to proceed to a large extent by trial and error so far as the central organs of administration are concerned. I think there is room now for close scrutiny of the various arrangements for consultation, for utilising voluntary bodies and for decentralisation: I suspect we could make use to a much greater extent of these methods than we have hitherto done, and that the whole quality of our public life will improve or deteriorate in proportion as we do make such increased use. I think that these matters are of more importance than the more mechanical ones of avoiding duplication or gaps in dividing the work; for if we maintain an adaptable system it can work in an apparent untidiness that means much less than it appears to mean. There will be loose ends no matter what care is taken to try to effect system and order in an administrative machine; but when a machine is running co-operatively and with a reasoned informality, they will be caught up and dealt with. Avoidable untidiness and needless complications should, of course, be eliminated wherever this is possible; but it matters less whether purists are pleased than that practical administrators should know where they are and that the public should know where they are.

CHAPTER VII

PUBLIC SERVICE: PERSONNEL, CONTROL AND POWERS

i

It is clear from the previous chapter that today Civil Servants form only one part of our administrative personnel. In addition to the "regular Civil Servants" we must even include unpaid members of the general public in this personnel. Then we must include also other types of paid official, and not only the local government officers who might be described as "local civil servants", but also men drawn from outside professions and commerce and industry who help to compose the staff of some of the newer administrative organs. The varied methods of recruitment and the varied backgrounds of the men and women involved are sufficient reason for maintaining that at least we cannot have in this country a bureaucracy: we could at most have bureaucracies.

How far we do have bureaucracies is a question to which part only of the answer will be suggested in this chapter. Part has already been suggested, and more relevant material will be considered later on. But this is not the only question to be asked about our public servants; another, to be considered first, is whether the systems by which they are recruited and organised are efficient: that is, are they calculated to ~~staff~~ the various services efficiently? No one of these systems is quite unique: they are all, for instance, in one manner or another, competitive as regards entry, although they differ in the type of competition employed. So far as the unpaid administrators are concerned, those, for instance, who represent voluntary organisations have reached their positions by the methods familiar to any who have been members of clubs or any similar organisations: they are men who for one reason or another are able to carry conviction, who will come forward and speak up, listen to complaints, appear ready to help and not to be feather-

ing their own nests, co-operate on committees, and show good results in return for the trust reposed in them. The majority [other than "regular Civil Servants"] of the staffs of the "minor" types of administrative agencies are appointed in the same way, as a rule, as are most members of staff in businesses—that is, by interview and after consultation of references; but perhaps, in the higher appointments, the methods of appointment are more open than in most businesses. The same applies to many local government officials. It is when we come to the residue of local government officials and the majority of Civil Servants that we reach the special method of recruitment by competitive examination.

This method of recruitment was introduced in the first place as an improvement on the methods of patronage and purchase that had previously prevailed: open competition was designed to eliminate influence as a means of securing an appointment. In particular, however, for that level of the central government Service whose duties were to be "administrative" or supervisory, the system of competition was to involve examination and the examination was to be one whose tests were of a broadly intellectual character rather than of an immediately practical character. This examination, as a Committee of 1917 agreed, should provide "a test of general rather than of specialised ability and education", because the best qualification for a Civil Servant was "a good natural capacity trained by a rational and consistent education from childhood to maturity".¹ It has been objected to this system that it still admits one form of influence because the type of examination involved is such as cannot with any hope of success be taken save by those who have been fortunate enough to have had a university education; and that even of this small section of the community the candidates most likely to achieve success are those from the more ancient, and expensive, universities. It has also been objected that the notion of recruitment by examination is anyhow faulty because examination does not test administrative ability, and because, in any case, what is often wanted is special ability.

¹ Report of Committee appointed by the Lords Commissioners of H.M. Treasury. Cmd. 8657. (1917).

The first objection is not really an objection to the system of recruitment as such so much as to the undemocratic nature of our educational system; and even if the best abilities are coming from the least democratic parts of such a system we still cannot reject their service on grounds of efficiency, on whatever other grounds we might reject them. But it is, even now, an old-fashioned objection. Oxford and Cambridge have, for many years, ceased to be preserves of the wealthy; educational opportunities in general have already begun to level up. And if we consider that the most recent arrangements for further levelling do not go far enough, it is too late to try to see that more far-reaching arrangements are made. There is more in the second objection, but it is again based on a misreading of the situation, even as it was, let alone as it now is. The examination to which candidates have to submit themselves is not merely one in the subjects they have studied at a university. The written work also includes several papers in general subjects (so that, for instance, a man who has studied classics at the university would nonetheless have to answer questions on popular science). This is, of course, the kind of thing that can be "crammed"; but the relative skill with which different men can cram is far from being irrelevant as an index to their usefulness; barristers and most leading business men and politicians work to a very large extent by skilful cramming. And in any case, the examination consists of still another part to which a surprisingly large proportion of the possible total of marks is attached. This is the interview at which the candidate has to present himself to a board and answer questions about himself and his interests and ambitions (the board having previously obtained confidential reports about him from his tutors or professors). It is at the interview that evidence of potential leadership and enterprise may be sought. A university is a sphere in which qualities of leadership and enterprise can be shown. How many M.P.s, for instance, have not first developed their debating powers in Union Debates; and by no means, either, simply in Oxford or Cambridge; James Maxton and Walter Elliot developed debating skill in Glasgow University Union. There are opportunities, too, for more than talk: an undergraduate can

show whether he is capable of running things. The interviewers have records of any such activities before them, and the interview itself gives a further opportunity for learning about the candidate, for they can see how he behaves himself in a somewhat uncomfortable situation. They can also learn some minor matters of importance, such as whether he speaks distinctly, appears quick in the uptake, is polite, easily irritated, or timid or impertinent. This was the sole system until recently; now a further stage has been added designed to supplement the interview by prolonging the period of observation and making use of various types of tests, including "psychological" ones, for which a single interview would not afford the time. How far this system can improve on the unaided interview it is still too early to say. Perhaps it should at least serve to catch the too-glib young man who can make a good impression for a short time, and it may help the more diffident ones who take longer than can be given in an interview to come out of their shells. There is still, however, the other criticism, that what is wanted is not general but special ability. This is beside the point in two ways. At the top of a department it is general ability that is wanted for several reasons. Parliamentary government is government by amateurs; even Ministers are rarely technical experts. If the wishes of Parliament and of Ministers are to be put into practice, then there must be some mediation between them and the experts upon whose technical knowledge they must rely: they must be able to be reassured that the experts are really doing what they want them to do, and someone must develop the skill (and it is a very fine pitch of skill) that can explain to experts what the non-technical requests of Ministers really mean, and to Ministers what his experts are really saying and doing. Then, again, someone must take a general view of a department, see that its various parts keep in line, and in particular see that experts remember that they are to work as members of a team. These are both jobs that have to be learned within a department or in some other way by experience; they cannot be taught in any "course". And while it may be argued that the departments should take in men who have learned administration elsewhere, it may be replied that this is by no means

the uniform practice in other organisations which also take administrative entrants at university-leaving age.¹

Another simple fact that is often overlooked is that when a government department wants experts as such it recruits them as such, and not through the channels we have been discussing; and they are some of the men between whom and the Ministers the administrative Civil Servants must mediate.

So far, attention has been confined to the "administrative" grade of the Civil Service. There are also "executive", "clerical" and "industrial" grades, the first two recruited on fairly similar lines to the administrative grade, but at stages lower down the educational ladder, and the latter with nominal tests or simply the normal methods of industrial recruitment.² Little criticism is made of the methods of recruiting these grades, and so far as the industrial grade is concerned, it is accepted as having more or less the same significance as the comparable grade in other forms of organisation. But objection is often taken to certain circumstances relating to the position of the other two grades, which deal, respectively, with the

¹ The best system is, of course, to combine both methods, that is, keep the present system of initial recruitment, but supplement it on suitable occasions by recruitment from outside at later ages and for higher posts.

² Several warnings are necessary in connection with Civil Service grading.

(1) The relations between the grades are not purely horizontal. Above all, the Administrative Grade should not be thought of as a "top" or officers' grade with the other grades in the position of "other ranks". The higher reaches of the Clerical Grade overlap the lower reaches of the Executive Grade in pay and status, and there are higher officers whose primary duties are conceived as Executive but who match in rank all administrative levels short of Permanent Secretary. There is no question of Assistant-Principals being "over" Assistant-Directors, let alone Directors-General (who are, broadly, the peers of Under-Secretaries). (2) Professional and scientific officers, e.g. scientists and statisticians stand outside this system of grading, and in some cases, e.g. the Chief Medical Officer of the Ministry of Health, may include some of the most important members of a Department. (3) The system is not rigid, and the ranges of grades to be found in different departments vary considerably: some departments, because of special problems, have to have special grades peculiar to themselves.

Thus in a large department, the important division of personnel is as likely to be vertical as horizontal: e.g. in the Ministry of Supply, under the Permanent Secretary, come co-equal administrative, executive and scientific heads. Nor can the responsibilities of these be kept in water-tight compartments. (See the discussion on pp. 88-9.)

The present discussion is thus concerned simply with the relations between the Administrative Grade and the lower reaches of the Executive and Clerical Grades.

minor day-to-day cases and with routine clerical matters. It is there, it is said, that the great lump of inertia of the Service resides, and the fault arises in three ways: there is too little weeding-out in early stages; there is too much automatic promotion within grades; there is too little promotion between grades. In this respect Civil Service practice is often compared to its disadvantage with practice in business and in the public corporations where methods with the inefficient are more drastic and the possibility of rapid promotion stimulates initiative. These criticisms really refer to the system as a whole, and should be considered as such. In many ways the main force of the first criticism lies most against the administrative grade, just because the responsibilities of that grade are greater and because, however good the tests may be that are devised for assessing potential administrative ability, only the actual conduct of the job can really show a man's worth. There would be much to be said for making a real probationary period and for the use of dismissal in extreme cases of idleness or inefficiency. It is more difficult to weigh the merit of the second criticism. In any large organisation a certain amount of promotion is bound to be more or less automatic, and to go by seniority. The system of regular increments of increase in salary is made subject to good reports by a senior officer on the work performed, but it is difficult to give a really bad report except for outstandingly slack performance. There would be a good case for having a sliding scale of increments and allowing the maximum increment only in exceptional cases. It might also be made possible to be promoted more than one step at a time, and the use of demotion as well as dismissal might be held in reserve as a sanction. The practice as regards promotion between grades, and especially from the executive to the administrative grade, appears to vary to quite an extent as between department and department. It is probably the case that there has been less of it than there might have been, and that the small extent to which it has been practised has been the cause of some jealousy on the part of the executive grade. On the other hand, so long as there have been very real differences in the educational backgrounds of the entrants to the two grades, there have been real difficulties in the way of

finding many members of the executive grade with the necessarily wide and adaptable outlook required in the administrative grade. Perhaps more has been made of this than should have been as a reason for not allowing more promotions, but it is a reason that should, in any case, operate less in the future. Promotion would also become more competitive if senior posts were liable to be filled from outside when no suitable Service candidates were available.

Another criticism that has been made of the Service is that it is too insulated from the general public. This criticism is sometimes joined to the common criticism of the mode of recruitment of the administrative grade, and it is pointed out that there is something queer in expecting our affairs to be handled efficiently by a Service staffed at the top by men with *no experience save of school, university and the Service itself*. This is not a completely fair criticism when stated in this form. The young men and women who enter the administrative grade occupy subordinate positions there, and it is only after they have gained experience in the course of their careers that they acquire influence. But while there are opportunities for Civil Servants in the course of time to make as many contacts with different sides of life as could be obtained in any other occupation, it is to some degree a matter of chance how far any particular Civil Servant's work will put him in the way of making such contacts. It depends very much upon the kind of job he is called on to perform. There is, therefore, some room for the deliberate organisation of the Civil Servant's training with a view to ensuring that it takes him over sufficiently wide and varied ground; and I think that this is not merely a matter of seeing that he does not stick too long at one job inside his department; it probably requires a fair amount of moving about between departments, and perhaps most of all some interchange between the Civil Service departments proper and the other types of administrative body; at least between the headquarters of a department and its out-stations, or regional or local offices, and perhaps also between central government departments and local government offices.

One final question should be mentioned in connection with the Civil Service, that of its scale of pay. At any rate at the top,

the salaries of Civil Servants compare unfavourably with those paid for jobs of a similar degree of responsibility in other occupations. In one sense, of course, too much can be made of this point. What we desire to attract in public service is not the ambition that can be interested only by the possibility of glittering prizes; the qualities of the best Civil Servant should certainly include initiative, but must not fail to include loyalty, disinterestedness, honesty and application. This is symbolically recognised so far as the administrative grade is concerned by the fact that the members of that grade receive no payment for overtime however long they may work. But this attitude can be carried too far, and has, perhaps, less force in changing circumstances. It should certainly not be carried to the point at which the most intelligent and energetic young men and women tend to prefer other professions, and it becomes more anomalous when the regular Civil Service is only part of a more general and variegated public service in parts of which the rates of pay for comparable work is higher. A Town Clerk may receive much more than most of the high officials in a central department. The top officials of most of the semi-autonomous bodies are paid at business rates rather than at Civil Service rates. These differences cannot help but have some effect upon the outlook both of the Civil Servant and of the business men and others with whom he may have to deal, and they will have to be removed if any serious attempt is to be made to introduce new blood into the Service by recruitment from men with experience in outside organisations.

Should the Civil Service in its traditional form be retained? I think it should be for the same reason that I think the traditional form of government department should be retained. Subject to the criticisms that have been mentioned, it is an efficient organisation, and its continued existence guarantees us the services of a trustworthy and public-spirited corps of men and women. If it lacks within itself the leaven that would make it less uniform and more widely representative and responsive to the outside public, it gains a measure of such leaven from its contacts with the other types of public servants; and they gain from their contacts with its traditions of steadiness and thoroughness. Even if provision is made, therefore, for casting

a wider net for recruitment for the regular Civil Service, it will be of value to retain our various forms of public servant: there would be no more point in insisting that the Civil Service should cover the whole ground of public service than that it should be eliminated in its present form. The variety of types of administrative body should continue to be paralleled by the variety of types of administrator, and it is safe to forecast that in fifty years from now none of these types will be exactly the same as they are at present.

ii

At first sight the apparatus for co-ordination and control of administration looks very patchy, especially beneath Ministerial level, and especially as soon as we leave the "standard" government departments. Yet it is curious that the great complex of different kinds of agency we have described should work at all, or if it does, should implement policies at all akin to what Parliament and Ministers want, if in some way or other it is not maintaining internal order and acting responsively to Ministerial directions. The general explanation must once again be sought in variety of arrangements rather than in unity, and in terms of informality rather than of formality in the arrangements.

The particular explanation is simpler, however, as regards certain parts of the machine. For the standard government departments there is a formal and powerful means of co-ordination in the special position of the Treasury as a sort of super-department. This operates in several ways. First of all, the Treasury co-ordinates all the financial activities of the government, and, as doing so, it is in a position to exercise control over any activities of other departments that involve expenditure. The final approval for the proposed expenditure of the departments is obtained, as we have seen, from Parliament's approval of the Estimates. But before the Estimates appear in Parliament they are drawn up by the departments and submitted to the Treasury for its approval. The approval of the Treasury is also required in the course of the financial year if

a department finds that it is going to be involved in some form of expenditure for which it has not had cover in the Estimates. To keep each department in proper touch with the Treasury on these matters also, two devices are used: within each department there is a finance division to act as its agent in dealings with the Treasury and to remind it of the occasions when it should obtain Treasury sanction before taking action; and the Permanent Head of the department is also its Accounting Officer, so that as part of his general responsibility for the conduct of his department he has the specific responsibility of seeing that its finances are in order.

Then the Treasury is also the central authority controlling the whole of the regular Civil Service, and dealing with its classification into grades, its rates of pay and other conditions of service. The Treasury's agreement is required to the size of the establishment of each department. It is represented within each department by an establishments division which carries out Treasury rules in regard to the appointment, remuneration, promotion, etc., of the majority of the individual officers of the department. More senior positions in each department are dealt with by the Minister on the advice of the Permanent Head of the department who is, in turn, advised by the head of the establishments division, and for the most senior appointments the Secretary to the Treasury advises the Prime Minister and the departmental Minister. Thus the personnel at the head of all the departments is greatly influenced by Treasury choice, and the highest officials of the various departments together with the highest officials in the Treasury—in all, *no more than a few dozen men*—constitute an élite at the centre of the government service, the members of which are all known to one another and are accustomed to working with one another.

It is not difficult to understand that the formal controls of the Treasury should be reinforced by a considerable amount of informal co-operation. But the formal controls do not stop at the point described. Not the whole of the arrangements for co-ordination could be canalised through the Treasury or it would become an impossible bottle-neck. Nor could reliance simply be placed on control of selection and promotion of

personnel. Further devices are therefore used. One recent development has been the attempt by the Treasury, to introduce uniformity and order into the working of departments through control of organisation and methods, which is reflected in the setting up of separate Organisations and Methods Divisions in the separate departments. These controls are aimed at keeping each department, in its domestic working, in line as regards general requirements of efficiency and responsibility. It then remains to ensure that they work together with a minimum of overlapping and friction, and present a unified and coherent front to the public. The most important formal device for this purpose is the inter-departmental committee, and the more important of such committees are summoned by the Secretary to the Treasury. These committees work with full formal apparatus. They each have a secretariat; they meet to discuss carefully prepared and previously circulated memoranda; their conclusions are set out carefully in their minutes and provide a basis for working rules of co-operation amongst the departments to which they refer. The Cabinet Secretariat also maintains contact with such bodies. Even these arrangements, however, could not by themselves ensure completely smooth inter-departmental working. It is one thing, for instance, that departments should agree amongst themselves how a particular class of case is to be dealt with; it is another matter applying the rule to individual cases as they arise. Again, cases arise within the province of one department that clearly involve another department also, and there may be no standing inter-departmental rules to cover them. Each department, therefore, requires to have sections which specialise in maintaining contacts with other departments and in clearing with other departments such matters of common interest; and the more purely domestic sections of each department must learn to know the types of cases in which they should turn to such liaison sections for assistance. This is a most crucial part of inter-departmental working, and it is liable to involve as great a degree of informality, at its level, as obtains between the highest officials of departments at their level; for it will work the better to the extent to which liaison officers not only

make a point of familiarising themselves with all aspects of the work of their own departments, and cast their nets within their own departments as widely as possible, but also maintain extensive relations with outside departments through "opposite numbers", so that they can quickly appreciate, as cases arise, which are the right contacts to make.

The element of formal control and co-ordination appears also at the level of local government administration. This is not the place to describe the arrangements made within the machines of the local authorities themselves, but it should be noted that, apart from the regulation of the whole of the activities of the local authorities by statute, they are also placed under the supervision of the various government departments and semi-autonomous bodies for the different functions they undertake. This supervision is mainly in the hands of the Ministry of Health, the Home Office, the Ministry of Education, and the Electricity and Traffic Commissioners. The methods are numerous and they leave few loopholes; they include inspection, approval of the appointments of certain officials, the payment of grants subject to satisfactory standards, agreements to schemes and audits of certain accounts (There are also statutory arrangements for the general audit of accounts.) It is an interesting feature of these arrangements that the Treasury, which plays such a large part in the direct control of the central departments themselves, does not have a direct part to play in the control of the local authorities.

In contrast to the fields we have considered stand the semi-autonomous bodies. They are in varying ways—but generally at intervals rather than continuously—subject to Parliamentary review; but beneath this level they neither have the relations with the Treasury that the standard departments have, nor do they always have the relations with any standard department that the local authorities have. Created as freer agents, they have not been intended to fit so rigidly into the rest of the machine as have the more traditional parts. Then again, their functions have, in many cases, been more specialised, and it has been possible for them to get on with their jobs with fewer contacts with other bodies than the

other parts of the machine have required. But they do not plough entirely lonely furrows, and there are occasions when they must consider, just as the standard departments must, how the work they are doing accords with that which is being performed by other bodies. When such occasions arise, and if they have not been provided for in the arrangements made when the semi-autonomous body was set up, then reliance has to be placed to a considerable extent on the less formal methods of co-ordination that have been noticed. This is rendered easier and more effective than it might otherwise be, by the fact that the personnel of these bodies may contain persons with previous experience in the regular Civil Service, or in the larger types of business organisation in which the methods of working have to be similar to those practised in the government departments. It is thus once again clear that the more contact and inter-mixing there can be between the officials of the different kinds of bodies that make up the administration of the country, the more smoothly will the system work, and not merely as a matter of goodwill obtaining amongst the personnel involved, but also as a matter of economy and efficiency in the machine itself.

The arrangements that have been described above have not gone without criticism. Some critics have objected to the central position accorded to the Treasury in relation to the standard departments, and others to the relatively small part played by formal arrangements. The objections to the Treasury position have had two sides: it has been argued that the power of the Treasury is gained at the expense of that of Ministers, and also that the outlook of the Treasury has been too narrow for it to be entrusted with such power. I will consider later the question of the authority of Ministers vis-à-vis the administrative machine; but it should be said here that there is a limit to what they could expect to control with their own hands, and that if the degree of control left to the Treasury is considered to be too great, then so also must be the degree of discretion left to departments themselves for ensuring their own arrangements for co-ordination. What in fact happens is that Ministers assume they can trust the departments not to abuse the discretion they have. I think they are right in

this, and that the position would be impossible if they could not be certain of being right. That it is not impossible is demonstrated, to my mind, by the absence of crises between Ministers and their servants; and our reciprocal system of Ministerial responsibility and Civil Service anonymity appears to be the guarantee of the position. The question of the alleged narrowness of outlook of the Treasury takes us on to different ground. It has two aspects: it may be considered wrong that a department whose concern is primarily with "economy" in the narrow sense of the word should have a central position of authority in relation to the government departments generally, more especially at a time when government activity and public services are expanding. The other aspect is that the élite of leading officials may form too much of a "Treasury clique". One can see the danger in both cases. Our machinery of government is, from one point of view, clogged in favour of encouraging timidity and cheese-paring in government departments. Outside the machine sits the taxpayer, too often interested solely in seeing that his taxes are kept to a minimum, and ever on the alert to complain about "government extravagance". In Parliament, the Opposition and the private member can propose only reductions, never increases of expenditure. And departmental proposals for expenditure are further "vetted" by the Treasury before encountering these hostile forces. On the other hand, some supervision in the name of economy must be exercised in any money-spending organisation, and, indeed, the objection is not so much that the Treasury should perform this function but that it should perform its other functions as well. Some have feared that questions of staffing tend to be regarded as particular aspects of expenditure rather than on their own merits, and it has been suggested that they should be dealt with by a body that is independent of the Treasury. We have already noticed how the salaries of higher Civil Servants compare unfavourably with those paid to broadly corresponding employees in business, and anyone who has ever seen the inside of a government department will not consider that government office equipment is lavish in comparison with that of the average business firm. But it should be emphasised

that if it is Treasury control that is responsible for these matters it is only in line with a very representative section of public opinion that it should be so. (And, it should be added, the Treasury would have to continue to exercise some such influence even if the actual establishments side of its work were to be entrusted to some other body.) I do not think that it can be said that the public gets the sort of Civil Service that it deserves: in many ways the British public gets a very much better Civil Service than it deserves in light of the amount of interest it takes in the Service. It is truer to say that the Civil Service gets the kind of treatment that the public will tolerate for it, and if our Civil Service is too economy-ridden, it is for the public to agitate for the development of a more generous conception.

The seriousness of the other charge, of domination by a "Treasury clique", depends, if there is anything in it, upon the extent to which the circle of people concerned is too exclusive and upon the extent to which it is a circle insufficiently open to general influences. I doubt whether much could be made of either of these points. Apart from the traditions of the Service, the heads of the Treasury and of the other departments are in too close and frequent contacts with political leaders and leaders of other walks of life to practise un-noticed any great degree of exclusiveness or to keep too aloof from the general currents of opinion. It is probably true that they form the only channel through which the notions that will alter the outlook and shape of the Service will proceed; but this is not unique to their sphere. It simply means that they, along with the established leaders in any social sphere, have a special obligation to keep themselves open-minded, and I think that they have the advantage over some types of leaders that they practise a profession that itself conduces to the virtue of open-mindedness.

I can spend no time on the question of central-local relations. The criticisms made in this connection come from two quite opposed points of view. Some people hold that the local authorities are almost strangled by the hold maintained on them by the central departments, others that the local authorities have too much liberty. I think that anyone who

looks into this question at all thoroughly will conclude that while a considerable number of changes should be made in central-local relations, neither of these charges is correct.*

THE final criticism is the most interesting—that there is too little formal co-ordination and control. It is clear that if by this is meant centralised control, to attempt to satisfy the critics who adopt this standpoint would be to fall into the hands of those who consider that the Treasury has too large a part to play, unless some other form of centralised co-ordination and control could be devised; and none has so far been devised that has had much to commend it. But, in fact, what the critics have in mind is usually that there is inadequate formal inter-departmental machinery. I think that this criticism is based upon a lack of appreciation of the extent and importance of *informal inter-departmental co-operation*, which, in turn, is based upon a lack of understanding of the extent to which administrative arrangements have to be worked out as the work proceeds, and not in advance. Over-multiplication of joint committees is probably a greater practical danger than the absence of such committees. Any new administrative institution tends to make work where there was none before: its members have to take time from other work in order to attend it; there is a constant danger, in such bodies, that they will outlive their usefulness, whether because they become a habit or because their chairmen and secretaries cannot bear to think that *their* committees should ever disband. Our practice has therefore been to be cautious about the setting up of formal inter-departmental bodies save where they are undeniably essential. At the same time, by refusing to let departments become dependent upon such bodies for being kept in line with one another, we have encouraged the development of an alert and sensitive type of co-operation that could not have developed by any other means.

These comments are, of course, entirely concerned with the question of co-ordination and control beneath Ministerial level. I will consider later the relation of the Cabinet to these questions.

iii

All administrative authorities work within the limits that may be imposed by the legislative authority of Parliament. No administrative authority, however, can confine its activities simply to putting into practice express Parliamentary rules. In the nature of things, rules must be fairly general in character and cannot indicate the particular cases that are going to arise under them, and it must be a matter of administrative discretion to decide how such rules apply. Courts of Justice, however, can be given the function of declaring, if they are appealed to, whether, in the exercise of discretion, the powers that Parliament has given are being exceeded. Obviously, in this there is room for argument whether such activities of departments and courts simply "develop" Parliament's legislation or themselves actually involve the "making of Law". For our present purposes we can ignore this question. It means very little in practice as long as the system so works that Parliament and people know exactly what is going on, and any excesses of power or perversions of Parliamentary intentions will quickly come to light and be dealt with. In the complex machine of the modern State, however, things do not work quite so neatly, and in particular certain developments have given rise to some perturbation. Administrative agents are not just recognised as requiring to exercise discretion: they are given specific powers by Parliament actually to legislate themselves, their position at law has been a special one, and they have been given powers to set up tribunals of their own, outside the working of the ordinary system of courts of justice. Fully to understand the working of our administrative system, then, we must consider the nature and extent of "delegated legislation", the legal position of departments, and "administrative justice".

As regards delegated legislation, it must be emphasised that the problem is not how to do without it, or with less of it, but simply how to make the best use of it; for its necessity and benefits cannot be doubted. Its existence represents

no more than an extension of the inevitable principle of administrative discretion in the complicated circumstances of modern legislation. With the weight of business what it is, Parliament already has to leave some things undone, and the price of trying to cope with the whole of the possible details of any legislation would be that more and more would have to be left undone. This would be intolerable and, therefore, there has to be a compromise. Parliament tries to keep a general grip on all legislation, and it does so by widening the sphere of administrative discretion and permitting its own legislation to be supplemented by subordinate legislation. This system has several advantages. It saves the time of Parliament doubly, because it enables discussion of an initial Bill to be shorter, and makes it unnecessary to consider innumerable amendments later on. Again, it saves time and trouble for the departments because it reduces what they have to put to Parliament. It increases the flexibility of legislation because it permits the main provisions of a measure to come into operation while leaving for later settlement various adaptations that may be required to fit these provisions to *particular circumstances or to different kinds of problems*. Sometimes, again, while it is clear what is desired as regards the general shape of a measure, it would be advantageous to consult interested parties about the detailed application of some part of it; and the power to make the consultation and then fill in the relevant part of the measure can be delegated without the whole of the measure having to wait until the consultation has been made. Some measures, moreover, cannot operate until adequate administrative machinery has been built up, and no-one can say in advance how long this will take; but the power to fix the appointed day for the coming into force of the Act, or of a part of it, can be delegated. These are all essentially useful aids to Parliament, and no problems arise so long as the activities they involve remain clearly subordinate and carry with them no injustice to the public. This is reflected in the criticisms that are made. The general principle of delegating legislative power is not called in question; what may be questioned is whether the powers to delegated are always really subordinate, and whether the

working of the system does not involve some injustice. These were the broad conclusions of the 1932 Committee on Ministers' Powers specially appointed to enquire into delegated legislation and other matters, and they have been generally accepted in most discussions since that time.

Before we consider these questions it is best to be clear just what we are talking about. It is not, for instance, extraordinary powers delegated in times of emergency, but powers delegated in ordinary times in respect of such day-to-day matters as health and unemployment. Again, what is normally called delegated legislation is not the only form of legislation that does not involve the ordinary Parliamentary processes. In exceptional cases, Governments may act by what are known as "prerogative orders in council", that is, by using the ancient powers of the King in Council.¹ This is a method used, however, only in special cases, and its use is not called in question. Powers of delegated legislation are given, as the name implies, by Parliamentary statutes; they may nominally be powers given to the King in Council, or to the Minister at the head of a department, or they may be given to bodies other than ministerial departments, for instance, to Public Corporations, local authorities, or even to professional organisations. Most of the discussion that has been raised about them has been due to the fact that they are normally taken to be powers in the hands of administrators. The names given to the powers are various and help to make the subject appear even more complicated than it is. Powers may be given to proceed by "statutory orders in council", by plain "orders", by "rules", by "regulations", by making "provisional orders", or by the "confirmation of schemes". One piece of clarity has, however, quite recently been introduced: it has been decided that the actual document in which any of these things is done will be known, in all cases, as a "statutory instrument".

Let us see, then, what the criticisms amount to. First, we should appreciate the dimensions of the problem. It is largely because of the very extensive field that has been covered comparatively recently by delegated legislation that the whole

¹ See Appendix I.

question is taken so seriously. The practice as such is old, and it caused little comment even in the last century. It is during the present century only and since the 1914-18 war, indeed, that it has reached such a pitch as to become a major topic of discussion, and, we have seen, to have a Committee appointed to review it. The paper now covered annually by the printed rules and orders amounts to two or three times the extent of that covered by the Acts under which they are made. For instance, between August 1st, 1945, and June 30th, 1946, 1,744 statutory rules and orders were made. In 1920, 2,475 were made, and in 1942, 2,937 were made.¹ Departments have varied, too, in the number of officials they have authorised to sign orders under Acts; in some very few have been given this authority; in one, in 1946, there were 89, together with 14 "regional or other controllers". It is against this background that the force of the criticisms must be assessed. It is not considered likely that there is any deliberate twisting of the intentions of Parliament, but simply that the great size of the machine and the vast amount of legislation that comes into force by this means make it possible for departmental rules to get out of line with Ministerial intentions without either departments or individual Ministers realising what is happening.

The main criticisms are these: (1) Parliament itself has been at fault because in making grants of power it has sometimes delegated powers it should have retained for itself, and it has sometimes delegated powers in such a way as to prevent the courts from being able to safeguard individual rights. (2) While in most cases there have been no objections to the actual types of powers delegated, there has too frequently been inadequate provision for Parliamentary supervision of the exercise of the power. (3) Again, in these otherwise unobjectionable cases there has often been insufficient provision for prior publicity. (4) The whole system has operated with too much confusion and too little uniformity. As we shall see, these criticisms vary in force.

It is certainly true that Parliament has at times made some remarkably far-reaching grants of power. Acts of

¹ In "normal" years between 1919 and 1939 the annual output of statutory rules and orders averaged about 1500.

Parliament have, in some cases, allowed Ministers to make regulations to deal with matters of principle, for instance, to impose taxation or even to modify Acts of Parliament themselves. It is not axiomatic, however, that these things should never be done. Indeed, few would maintain that any real question of principle is involved in cases in which the imposition of taxation or of the modification of existing statutes involve exactly the same as Parliament itself would order if it had itself reviewed the circumstances. The real points to be safeguarded are two: first, that the actual use of powers should not be otherwise than Parliament intended; and, second, that Parliament should be clear, in making the grant of power, just exactly what it is doing. The first point relates to the other criticisms that will be discussed below. On the second point I think it can be said that the number of cases in which the wording of an Act has given greater powers than Parliament intended has been very small. However, this does not put the matter right, and there is no doubt that particular care should be taken in Parliament to scrutinise in Bills the implications of the actual phrases by which delegations of power are made. It might even be advisable to use an expert committee for this purpose.

It is also true that Parliament has sometimes excluded delegated powers from the purview of the courts. It is open to the courts to declare the action of a department *ultra vires* (that is, in excess of its powers). This may occur either in the course of a case raised on some other issue or as the result of the granting of an order or an injunction as the result of a special application. Other things being equal, this will apply not only to the ordinary actions of a department but also to activities in connection with delegated legislation. But it has sometimes been the case that the statutes delegating powers have expressly excluded the operation of this safeguard. They may provide that the confirmation of an order by a Minister shall be conclusive evidence of compliance with a statute, or even that the validity of a statutory order made under an Act shall not be questioned in any proceedings whatsoever. This has given rise to the obvious criticism that it is a breach of the normal rights of the subject at common

law. But the question requires to be approached with some caution. Some matters may not be suitable for review by the ordinary courts or by reference to the common law. In particular it would be inappropriate to ask a court to decide on the validity of a departmental order if this were tantamount to transferring to the court the decision as to what was in the public interest; and, as will be seen later, in certain matters of public interest the common law, with its natural emphasis on individual rights, may not today be an appropriate measure. This does not mean that delegated legislation should never be subject to challenge, but even in the cases in which the subject-matter may otherwise render this appropriate, the necessity will be the less to the extent to which Parliamentary scrutiny is adequate.

The commonest criticism has been that Parliamentary scrutiny has not been adequate. In not all cases has it been made necessary to give Parliament an opportunity of seeing a statutory instrument. When statutory instruments have been required to be "laid before Parliament", it has not been clear just *when* they are to be laid. In some cases when they have to be laid before Parliament they may have to be laid in draft only, or in final form. Parliamentary approval may not, in some cases, be assumed until a positive resolution, sometimes of both Houses, sometimes only of the House of Commons, has indicated it. In other cases no provision for positive approval is laid down, and the statutory instrument may be taken as approved if a resolution for its annulment has not been adopted within a given period. The main anxiety has naturally arisen in relation to the cases that Parliament has clearly wanted to see, and this was increased during the recent war when 23 codes of Fire Service regulations were never laid before Parliament at all and an Act of Indemnity had to be passed to cover them. Even when statutory instruments have actually been before Parliament, it has been by no means certain that everything that should be seen would be seen, because the bulk has been too great for all the instruments to receive adequate examination.

There have been some changes in this situation, however, in recent years. The House of Commons in 1944 appointed

a Select Committee to examine all the departmental regulations, rules and orders that are laid before Parliament, and advise the House whether any matter of principle is involved in them to which the attention of the House should be drawn. This committee, which has come to be known as the "Scrutinising Committee", has worked well. Where it has doubts about an order it can require the department responsible to send an explanatory memorandum or an official to give a verbal explanation. It has reported some orders as objectionable, and it appears that its mere existence has caused departments to exercise greater care in the use of delegated powers. It is doubtful, however, whether this will be the final settlement of this side of the question. As its duties stand the new committee must have to look at many rules and orders that really require no scrutiny, and some way of making its work lighter may have to be found. A system of sub-committees may, perhaps, be required.

This system overcomes the question of scrutinising once statutory instruments are before the House; it does not affect the question of their getting to the House or that of the length of time the House may have for dealing with them. These questions have been tackled to some extent in the Statutory Instruments Act, 1946. This Act requires all statutory instruments to be printed and to bear, first, the date when they come into operation; and, second, either the date when they were laid before the House or a statement that they are to be laid before the House. It will thus be possible to determine cases of delay fairly easily, and as a further safeguard the Treasury is given the responsibility of advising the House at intervals what orders are outstanding. Statutory instruments that are effective unless killed by negative resolution must lie before the House for forty days to give ample time for scrutiny. For those that do not become effective until approved by the House, a similar safeguard is not necessary.¹

¹ This piece of tidying was preceded in 1945 by the Statutory Orders (Special Procedure) Act which was designed to introduce experimentally, and at first in a limited part of the field, various improvements in the procedure for Provisional Orders. This is a field that need not be considered in detail here as it has not formed part of the central discussions about delegated legislation.

The reasons for insisting on prior publicity have been two: first, to permit interested parties to make their comments (and so to assist Parliamentary consideration); and, second, to ensure that new rules of law did not begin to operate before those affected by them had the opportunity of learning that they were going to operate. The only general rules for publicity were, until recently, those contained in the Rules Publication Act of 1893, which only applied to such rules as had to be laid before Parliament and excluded the rules of certain departments. The Rules Publication Act is repealed by the Statutory Instruments Act, 1946, and that Act lays down new rules of publicity extending to almost all statutory instruments. It was not considered necessary to insert compulsory provision for the prior consultation of interests. It was considered that this was a custom well established in the departments and adequately honoured by them. Nor was it possible to lay down that no statutory instrument could come into force before being printed, much less before being approved by Parliament, because in many cases action would be too late if it were necessary to wait even for printing. This second feature of the Bill was much criticised, when it was discussed in Second Reading and in Committee, with the result that the Government accepted an amendment whereby in any proceedings it would be a defence to show that a statutory instrument had not been printed at the time of the alleged offence provided that the prosecution could not counter by showing that reasonable steps had been taken to secure that the public or the parties concerned knew beforehand of the arrangements to be made.

It will no doubt be considered that it can still be maintained that the field is distinctly confused and lacks uniformity. The recent legislation has effected some tidying, but there still remains, for instance, the major distinction between statutory instruments requiring negative, and those requiring positive resolutions. This point was not overlooked by the Government when the Statutory Instruments Bill was prepared, but it was considered that this was not a matter in which uniformity would be desirable. The lack of uniformity has not developed in the past just as the result of absent-mindedness. Parliament

has considered in some cases that the one method was appropriate and in others that the other method was appropriate; and Parliament would be unwise to bind itself for the future to following only one of the two methods: it must continue to consider each case on its merits.

This brief consideration of the usual complaints about delegated legislation leads one, I would suggest, to the conclusion that the main sphere for further renovation is now within Parliament itself, primarily at the point of the actual granting of powers, and secondarily in regard to the adequacy of the mechanism for scrutinising statutory instruments. If these two aspects are properly dealt with, then other dangers seem to be relatively light.

There is no room to discuss here either the structure of the system of courts in this country or the principles by which they work,¹ but mention must be made of two aspects of the relation between the administrative machine and the courts. The first relates to the position of the departments at law. The courts have been conceived as having, in the administration of justice, a function separate from those of legislation and ordinary administration. The authority of the judges in the courts has been a separate authority, derived, like that of the Cabinet, from the Crown, since they have, like the Cabinet, performed a function that was earlier performed by the Sovereign himself. It was long ago established not only that the King could not himself administer justice, but also that the Crown could not use the Prerogative to create courts to administer any law other than the common law. The decisions of the judges, as we have seen, could always be overturned by Acts of Parliament, but otherwise the judges came to be regarded as the sole authorities for the determination of disputes between subject and subject or between subjects and the State; and they had the function of ensuring that the administration conformed to the law.

The scope of the courts was traditionally limited, however, by the rule that the King could do no wrong, and by the rule

¹ See Appendix H.

that he could not be sued in his own courts. These were important limitations, because the central departments of State were headed by Ministers of the Crown, and they therefore shared in the immunities of the Crown: unless express provision were made they could not be sued either in respect of wrongs authorised by the Crown or in respect of wrongs committed by their servants in the course of their employment. Only the actual official concerned could be sued. This severe limitation was, however, modified in two ways: statutes might allow proceedings in particular circumstances, and the Treasury, in cases in which wrongs were clearly committed by officials in the course of their duty, paid damages to the injured party. (It did this, however, as an act of grace, and the injured party had no right to the payment.) The position was also different in regard to most contractual obligations of the Crown: in respect of these, a special procedure known as "petition of right" could be used, but even this was subject to the agreement of the Home Secretary as advised by the Attorney-General. The position of the central departments in relation to litigation was thus, to say the least, cumbersome, and it was difficult for the layman to understand. In 1921 it was reviewed by a Committee which prepared a draft Bill proposing, amongst other changes, that the Crown should be made liable in tort (that is, that it should be possible to sue a department as such in respect of wrongs committed by officials in the course of their duties), and that ordinary civil proceedings should replace petition of right. These recommendations were not then accepted, apparently because it was feared that juries would tend to award excessive damages against the Crown. In 1947, however, the Government introduced a Bill in the House of Lords which was based, with some modifications, upon the Bill prepared by the Crown Proceedings Committee of 1921. The purpose of the new Bill is to put the Crown, so far as practicable, in the same position as regards the law of torts as an ordinary person. There will, however, be exceptions in the case of functions of a kind not undertaken by private persons, for instance, the defence of the realm and the postal service. The petition of right and certain other ancient forms of civil proceedings are

to be abolished, and procedure in civil cases, by or against the Crown, is, so far as possible, to be the same as for civil cases between individuals.¹

More criticisms, however, have been brought to bear on the practice, which has developed over the same period as has seen the extended development of delegated legislation, of setting up special administrative tribunals, or of giving Ministers special powers to set them up in order to provide for the settlement of types of dispute likely to arise from administrative action. Examples of such bodies have been the Railway and Canal Commissioners, the Railway Rates Tribunal, the Land Commissioners, the Commissioners of Income Tax, the Area Traffic Commissioners, the Patents Appeal Tribunal, and various tribunals in the field of social insurance. Criticisms are clear and to the point. It is pointed out that if a Minister appoints members of a tribunal with a short term of office they cannot have the same independence as the judge in the ordinary courts who is appointed for life. It is also pointed out that special tribunals do not always follow normal legal procedure, that they do not always publish the reasons for their decisions, and that arrangements are not always made for allowing legal representation at their hearings. Again, unless the statute setting them up provides for appeals from their decision, the ordinary courts have no jurisdiction over them except in respect of excess or abuse of power or non-observance of the rules of natural justice.²

The main merits of this type of tribunal are accessibility, specialisation, informality, and the capacity to deal rapidly with their cases. These features are required by the conditions of modern public administration; and for that reason there is not the slightest likelihood of the general principle of the system being altered. It would, however, be an improvement, if some heed were paid to the criticisms that have been made. Where the business of a tribunal is of a legal nature, it should probably have a chairman with a legal training and some

¹ This is now enacted as the Crown Proceedings Act, 1947—W. H., February, 1948.

² See p. 28.

degree of independence; normal legal procedure should be followed where possible, legal representation should be allowed, reasoned decisions should be reported, and appeal on legal points to the High Court should be possible. Such steps would undoubtedly make the system considerably tidier and justice more uniform.

iv

I have emphasised in these last two chapters the complexity and variety of the machinery of administration and the extent to which its working depends upon the successful blending of different forms of devices—of official and unofficial bodies, of central and local bodies, of Ministerial and non-Ministerial bodies, of various types of public service, of division of labour and team-work, of formal and informal arrangements for co-ordination, of the maintenance of the authority of Parliament and the courts, yet the grant of legislative and judicial powers to the administrative machine and the preservation of some legal immunities for it. It is necessary to picture the overall pattern in order to appreciate the design of British government. It must be remembered that this pattern has developed through the mutual interaction of the parts. It was not devised as a whole, and its imperfections are never likely to be dealt with by attempts at re-designing the whole. The value, too, whether of the whole or of the parts, lies not in these regarded by themselves, but in them in relation to the people who have to work them and who are affected by them. This would be true of any institutions, but it is true in a peculiar sense of the institutions at which we have been looking because they are not of the kind developed to check or counteract individual stupidity or inertia, and operate on their own; they have so developed that they depend on individual intelligence and initiative in order to work properly. Their apparently unsystematic nature, also, specifically relates to British traditions. This again is only to be expected: a country's institutions and its traditions are naturally interconnected. But while the irresponsible transplanting or *a priori*

invention of institutions is one extreme of political unwisdom, another extreme is to look merely to past tradition to maintain the effectiveness of institutions in the present. As circumstances change, both traditions and institutions must change with them. Circumstances have not rendered the British a less homogeneous community, and they have, therefore, maintained the basic tradition of mutual trust that enables their peculiar institutions to work as well as they do. But circumstances have certainly made the business of government greatly more complicated and demanded more of each individual member of the machine. They have also affected the question of trust in at least one direction. When we trust another person we do not constantly stand over him to see what he is doing; but this does not mean that if he is working in difficult circumstances we should not see whether we can be of assistance. The present circumstances of British government are difficult, and I give brief consideration to the problems raised by this in the next chapter.

CHAPTER VIII

DEBATABLE QUESTIONS

i

I HAVE given in the foregoing pages a description, with some comments, of the working of British Government as I see it. The picture is, on the whole, favourable, not only as regards the principles the system is intended to embody but also as regards the effectiveness with which it embodies them. Other people would draw less favourable pictures. I have already, in the first chapter, explained why I differ from those who maintain that the principles of our system of government are wrong, or that it does not really embody the principles we think it does. Some people, however, who would agree with what I had to say there would object for a different reason to the picture I have now drawn; they would consider that I have glossed over some considerable inefficiencies in the system.

I have not intended to convey that all is for the best in the best of possible worlds. I think that there are questions that need attention and I will indicate some of them shortly. It is true, however, that I have been writing with a bias against certain types of criticism or certain emphases in some criticisms that represent what might be called the "rationalist" attitude towards government. The term is appropriate both because it describes what I think are the mental processes behind the critics' attitudes, and because these attitudes tend to emerge in recommendations for various forms of "rationalisation". There are many standpoints in politics that follow logically from the assumptions on which they are based, only the assumptions take insufficient account of the facts. It is from such standpoints that rationalist criticisms are made. Proposals to reform by rationalisation are similar in character: they are directed towards neat and tidy solutions which, indeed, fit the problem as posed; only the problems to which they are directed are different in fact from what they are as

posed. We should review the facts thoroughly before we pass judgment; and when we consider how untidy human nature is, we should not be surprised if we find that the neatest solutions are not always the best. No-one, of course, is likely to contest these two points; what is really debatable in this sort of discussion is which side has most thoroughly surveyed and understood the facts. That is one reason why this is not the last chapter, and I add another chapter on sources for facts.

ii

I shall come in a moment to the main questions that to my mind are most in need of attention. I have already mentioned various topics in relation to which criticisms and suggestions for reform have been put forward, and which I think require to be approached with some caution. There are some other matters which I agree need attention, but in relation to which it seems to me that the unwary can rather easily be lured into rationalist criticisms and the over-facile advocacy of rationalisation. These topics are Cabinet and House of Commons efficiency, the distribution of departmental functions, and the general question of limits of government action.

The question of the efficiency of the Cabinet arises first in relation to that of individual Ministers, which in turn arises in relation to the formulation of policy and to the control of administration. That is to say, it is normally agreed that the various activities of Ministers in Parliament must be taken for granted and that probably little can be done to lighten the burdens on them in this direction. It is feared, however, that with the present size of departments and the scope of their work and of the work for which Ministers collectively are responsible, there is a danger that the individual Ministers will fall between two stools; either they will know what their departments are doing or they will know what the Cabinet is doing; they will not know both. They may be physically present for the requisite number of hours both in their departmental offices and at Cabinet meetings; but one small

head cannot carry all that passes in both; and if they pull their weight thoroughly in one, then they cannot pull it thoroughly in the other. The question of the efficiency of the Cabinet as such relates further to the number of its members: a committee of twenty, it is said, is too large for the effective conduct of complicated business.

Proposals for overcoming these difficulties naturally seek to do two things, to reduce the extent to which the Ministers have to attend both to the Cabinet and to their departments, and to seek to concentrate the Cabinet itself. The commonest proposals have assumed the following forms:

(1) Reduce the Cabinet to about half a dozen Ministers without departmental duties and release the departmental Ministers from Cabinet work. This may be accompanied by reducing the number of Ministers as the result of reducing the number of departments through some form of rationalising departmental functions.

(2) Do not exclude the departmental Ministers who are normally Cabinet members (although perhaps reduce the number of Ministers by rationalising departments), but operate by a system of Cabinet Committees headed by Ministers free from departmental duties.

(3) (Either alone or in conjunction with one or other of the proposals above.) Assist co-ordination through the Cabinet by further extension of the Cabinet Secretariat system.

It is open to question whether the main proposals here indicated take sufficient account of one fundamental fact—that only the actual handling of the work of administration enables a Minister, or an official, to play a useful or an effective part in the formation of policy. The Minister who is in day-to-day contact with the machine must inevitably have a better understanding of it than one who is detached from it. He will also have the full loyalty of the officials in his department, and they alone can supply any Minister with an effective brief. It is no answer to suggest that the Ministers in an Inner Cabinet, or those who act as “super-Ministers”, or co-ordinating Ministers, may be elder statesmen with previous experience in the departments. Today an absence of a few months, or even a few weeks, from a department may mean

a complete loss of touch with its organisation and current problems. Equally the conception of the extended use of the Cabinet Secretariat requires careful consideration. The members of a central and detached body may not always see matters in perspective when they have no direct administrative responsibility for them. For this reason, to the extent to which there is a case for extending the range of the Cabinet Secretariat, it is of first importance that its personnel should be closely integrated with that of the departments; and the successful working of the Cabinet Secretariat is, indeed, likely to depend upon the devising of a system of constant interchange between it and the departments.

One sometimes wonders whether the dimensions of the problem presented by the Cabinet have not been exaggerated in order to allow an opportunity for suggesting an attractively neat solution. Two considerations strongly suggest this: in any Cabinet the Prime Minister and other party leaders (who may already be free from departmental duties) tend informally to fill the rôle of an inner Cabinet or group of "super-Ministers"; and further co-ordination is effected, as we have seen, by the *ad hoc* use of Cabinet Committees. The war-time experiment of having a co-ordinating Minister of Production was not repeated by the Labour Government when it came into office in 1945. That Government did create a new co-ordinating Minister of Defence.¹ It is conceivable that in one or two particular instances other co-ordinating Ministers might be created, but it is improbable that any complete system will be introduced with a view to the formal establishment of a "two-tier" Cabinet. The burden of departmental duties on individual Ministers is another matter. It is, no doubt, very real, although more pressing in some cases than in others. Inasmuch as it follows (as it is said to follow) from a tendency on the part of departmental officials to "put up", too much to Ministers for decision, the question is one of Civil Service efficiency, and I will consider it later. Other

¹ This was not the first occasion on which there was a Minister of Defence, but it was the first occasion on which there was a Ministry, and the function of the Minister was to co-ordinate common defence questions in such a way that Cabinet rank for him made it unnecessary for the Ministers concerned with the Armed Service Departments to be members of the Cabinet.

parts of the load on a Minister arise, however, from other sources: time spent in the House, receiving delegations, dealing with correspondence; I think that more of this work and of general policy work inside the departments might, without disadvantage, be dealt with by Junior Ministers—Parliamentary Under-Secretaries and Parliamentary Secretaries; more of such posts might be created so that in the larger of the departments Ministers would always have two or three such juniors to help them.

Proposals for increasing the efficiency of the House of Commons frequently want some adaptation of the Committee system. The motives for this are varied. Sometimes the idea is to let the private member have a more important place in the transactions of the House; sometimes it is to save the time of the House; sometimes "to improve the quality of legislation"; sometimes to provide supervision of the administration. It has also sometimes been considered that as Committees play a larger part in the work of the legislatures of other countries and in the local councils of this country, they should play a larger part in the work of the House of Commons.

These various strands require some disentangling. It must, today be accepted that the central control in the House of Commons must fall to the Government and the central functions of the House be shared between Government and Opposition. If the private member is to be more active, then it will be in the sense of employing his time more usefully rather than in the sense of having more opportunity for exercising a decisive influence on policy. Whatever is done about Committees will not be done with a view to inviting private members to make alterations of principle in Bills. There are, too, limits to the extent to which Committees can save the time of the House without introducing new and alien principles into its working. This is, for instance, the objection to abolishing the Committee of the Whole House: there are some measures that all the members of the House wish to have an opportunity of discussing at all stages. Also, the other business of the House is so heavy that attendances at House or Committee are likely to suffer if the occasions for such attendance are unduly multiplied. On the question of the

quality of legislation, it is clear that if the determination of principles is to be an affair between Government and Opposition, then Committees are unlikely to have any special effects, save on details of drafting, or on such questions subsidiary to the main purposes of Bills, as, for instance, particular grants of power to administrative authorities or particular administrative provisions. It has sometimes been thought that this work would be better done if the Standing Committees were specialized and there were one Committee for each department or group of cognate departments. But such a proposal again raises the difficulty of increasing the number of Committees, and it does not do justice to the existing provision for adding to the Committees any members with special knowledge that is likely to be useful when the details of a Bill are being considered. Nor does it accord with the principle that underlies the present conception of the method of work of the House, namely, that the House is not expert and does not intend to try to be. There are experts in the departments and provision is made in the course of preparing legislation for consultation with outside specialised interests. The function of the House is to bring such opinions and the opinions of the general public into some sort of balance, not to try to be more expert than the experts. These considerations give some reasons why the committees of other legislatures and of local councils cannot be copied. A more important consideration, however, is that the committee systems of those other bodies represent quite different underlying principles. The committee system of the French Chamber of Deputies in the Third Republic (and, no doubt, the system whose existence is assumed in the Constitution of the Fourth Republic), existed partly as a device to curb the authority of the Cabinet and partly to provide a remedy for that Cabinet's weakness. The committee system in the American House of Representatives has a special necessity since the Executive in the United States is not part of the Legislature. The committees of local councils are, to a large extent, administrative bodies, and in Parliament the responsibility for administration lies with Ministers.

Here again there is a danger that the dimensions of the problem may become exaggerated. We probably have quite

enough legislation. Adequate consultations are already made during the preparation of legislation. On the whole its drafting and administrative provisions are adequate. Private members do not rely entirely on the Committees of the House, to keep them informed about the working of the government machine: both Government and Opposition parties have their own informal committees in which members can be educated to their hearts' content. Time spent in the House can be saved in other ways than by procedural alterations. The simplest way is by staggering attendance, and this method is used. The Opposition party is unlikely to have to make any formal arrangements for this, but the Government party will, because it is concerned with the production of majorities at divisions; and the Labour Party members in the House have, in fact, been working since 1945 on an organized shift system. That these points are recognized within the House itself is suggested by the fact that on two main questions only has it been felt that there was scope for special Committee activities; these questions, as we have already seen, have been delegated legislation and financial legislation and administration. We discussed the former question in the last Chapter. On the second question there has been some lack of clarity. There is no desire to undermine the authority of the Cabinet, and the efficiency of the work of the Treasury in supervising the preparation of the Estimates is not called in question. The work of any specialised finance committees is thus really conceived as reinforcing the work of the Cabinet and the Treasury rather than as strengthening the hands of the House of Commons against them; if it affects the work of the Cabinet and the Treasury at all, it is by way of making them more careful and efficient. So far as audit pure and simple is concerned, the work of the Public Accounts Committee appears to be exactly what is required. There has been more doubt about what is required in relation to current Estimates, especially when it is agreed first, that the Treasury does its job properly, and second, that neither the House nor a Committee can be expected to go into all the details. There has been a feeling that a broader function has gone by default, a function somewhat akin to the wider discussion

of questions of economy that has been undertaken from time to time by the Public Accounts Committee. During the 1939-45 war, when Estimates were not being presented, a function of this kind was undertaken by the Select Committee on National Expenditure. Since the end of that war, the Estimates Committee has operated more as the Select Committee operated. Perhaps, as some have suggested, a new compendious committee to deal with both Accounts and Estimates could be set up. Probably the correct formula will only be found after trial and error. The question should be explored; but a review of the work of the Select Committee on National Expenditure might be the best preliminary: if the House is to operate any new device for the purpose of scrutinising more carefully the working of departments, care must be taken on the one hand that the authority of Ministers over departments is not reduced, and, on the other hand, that further congestion is not produced in already overloaded departments by extra work involved in dealing with enquiries from a new Committee or Sub-Committee.

It has sometimes been suggested that the work of the departments should be "rationalised" by means of a redistribution of functions, with consequential benefits in the shape of a reduction, first of overlapping of work as between departments, and second, of the actual number of departments (and, therefore, of the number of Ministers). It is not always realised that there would be very considerable difficulties in the way of large-scale movements of work amongst departments. Such moves are not mechanical operations; they are more like surgical operations involving the transference of a living organ from one body to another. Preparations have to be made in advance in the organisation of the receiving department to take over linking "drills" or procedures similar to those which are to be severed in the department from which the transfer is to be made. This is by no means an impossible task, but it becomes infinitely complicated when the question of personnel is taken into account. Only certain of the officials in a department will be concerned with only one class of work. When a particular class of work is transferred, such officials can be transferred also without much difficulty; but if

other officials concerned have other classes of work to attend to as well, then, if they are transferred, gaps are left in the manpower available for dealing with the other work. If they are not transferred, then either some officers in the receiving department must add to their existing work, which may not always be possible, or some new staff must be taken on. (Assuming, of course, that the whole-time officers transferred with the work cannot deal with all of it without assistance.) All these questions will arise in connection with a relatively simple transfer, and a wholesale simultaneous reorganisation would create chaos. Governments are therefore not tempted to undertake such drastic action. They prefer to take opportunities as they arise, as, for instance, when congestion happens to be increasing in one department at the same time as it is falling off in another. The end of a war permits some such adjustments: witness the redistribution between the Ministry of Supply and the Board of Trade, and the amalgamation of the Ministry of Aircraft Production with the Ministry of Supply after the 1939-45 war. But that is about as far as the process has normally been expected to go.

No-one, of course, who believes that there is really a major problem of maldistribution of functions is likely to be impressed by the considerations in the previous paragraph. But is there in fact such a problem? I think that this again is a matter that is not so simple as it sometimes looks. It has tended to be viewed from two standpoints, that of sorting out functions in order to obtain a logical distribution of the separate work of the departments, and that of removing from departments, and centralising, any functions that can be considered to be "common services". Recommendations from the first standpoint are usually based on the test adopted in the Machinery of Government Committee's Report, that is, in terms of concentrating a department's work round a particular major "service". But decisions as to what separate "services" ought to include are liable to be arbitrary, and some of the apparently most logical decisions in accordance with this principle are likely to be amongst the least practicable. No-one, for instance, would be likely to wish to maintain that the five-fold division of departmental functions suggested on

pages 83-4 should be rigidly followed; still less, one hopes, would anyone wish to recommend that the number of Ministerial departments should be reduced to five. Yet at the other extreme, any attempt so to confine the activities of each department as completely to eliminate all overlapping would not only encourage undue multiplicity and separateness of departments, but would also tend to reduce each individual department's efficiency.

This last objection holds also against many arguments for removing from departments, and centralising, any functions that can be considered to be common services. This is an unobjectionable enough principle in the abstract, but its application is not so simple. At first sight, for instance, research and statistics might seem admirable subjects for centralisation; rather than have separate research and statistics divisions in each separate department, the separate research and separate statistics divisions could be amalgamated to form two central common-service departments, with a saving of manpower and probably some avoidance of duplication of duties. Two interlocking arguments tell against this. From the point of view of the separate departments, research and statistics must be closely related to the day-to-day problems of work, and those engaged on them should, indeed, have both some opportunity of appreciating what these problems are, and some degree of responsibility for assisting towards their solution; neither circumstance is probable unless the research and statistics personnel are working as part of the common departmental team in continuous co-operation with those whose responsibilities are primarily administrative or executive. Again, from the point of view of the individual Minister and the central direction of a department, there are very strong reasons for having a department reasonably compendious and not merely specialised. Major problems of policy are liable to require for their solution the collaboration of administrators, executives, scientists and statisticians, and a considerable further range of specialists. No single department can, of course, hope to house under its own roof representatives of every kind of specialisation that is liable to be required throughout the entire gamut of its activities. But, for at any

rate the larger departments, the position should be somewhere between this extreme and the extreme that would follow from a severe application of functional rationalisation. For effective action a Minister must have a reasonably complete team at hand: he must be able to summon advisers quickly, and have the first claim on his advisers' time and attention. This is not to say that some measure of central co-ordination, and even some separate central provision of common services may not also be advisable; but that is a different matter.¹

The last notion I mentioned at the beginning of this section was that of the limits of effective government action. I shall deal with it briefly, because I shall be referring to it below. It should be observed, however, that when people speak in this strain they may have different points in mind. They may consider that there are natural limits within which the activities of governments ought to be confined because there are, for example, pre-ordained and separate fields for government action on the one hand and private enterprise on the other. This is a theme outside the scope of the present book, and I will not discuss it. There is another view, however, which, while similar to the one just described, is not the same and is relevant to the present discussion. It is the view that government, by some sort of original sin, as it were, must inevitably come to grief if it tries to do more than a certain amount. Now this is nonsense. Governments can do what people will make them do or let them do. If officials are incompetent and the public apathetic, they may come to grief quickly. If officials are zealous and the public co-operative, there is no limit to what they can do, whether or not that is what they ought to do.

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Some of the questions discussed in the previous section are important, although, as I said there, I do not think that in

¹ For instance, the Lord President of the Council is at present, under the 1945 Government, the Minister responsible for general scientific policy and for co-ordinating scientific work *not falling within the departmental responsibility of other Ministers*. At the same time he is responsible for the work of the Department of Scientific and Industrial Research, the Medical Research Council and the Agricultural Research Council.

all cases their exact importance is that which is most commonly attached to them. I come now to some matters that are, to my mind, more important and which I do not think are notifiably given sufficient attention. They link with the question of the limits of government effectiveness.

The first is this. No government can be effective if it makes too great a call on its personnel. Some of the considerations reviewed above were concerned, and rightly, with strain on Ministers and Members of Parliament, and it is possible to see some remedies that might be effective so far as these two groups are concerned. Less attention has been paid, I think, to the question of the strain on the Civil Service, yet in some ways this is the most important question of all. This problem breaks out at two levels. The first is that of the administrative grade, and especially of the higher ranks. Many people who consider that they do a hard day's work, and who, indeed, tend to scoff at the "gentlemanly" hours of work and the holiday provision allowed to Civil Servants, would be very considerably shocked if they knew how much work is done by some of the higher Civil Servants. In most business offices, 9.30 a.m. until 7 p.m. would be considered a reasonable day, and it might not be an undue hardship to take work home occasionally in the evenings or at the week-ends. But there would be objections to taking work home every evening and every week-end, and not just for isolated rush periods, but for years, indeed, for the greater part of a working life. Yet this is not an exaggerated picture of the normal position of many of the men on whom the successful working of our machinery of government depends. They are a minority, but they are the all-important minority of key men. Why do they do it? The answer is simple: because the work would not get done if they did not. Yet as government activities increase and work multiplies, the load that converges on them increases, and the process is cumulative because with the constant pressure and absence of relief the working tempo becomes reduced.

Why has this situation arisen? The answer connects with the second level of the problem. All of the work of the Civil Service involves strain in a sense that is absent in most other

walks of life. The larger the scale of organisation and the lower the position of the individual in it, the less intrinsic interest is there likely to be in the work. This is multiplied by the extent to which responsibility is called for and cannot be undertaken (for reasons which I discussed in Chapter Seven), promotion does not sharply relate to individual effort, there is less outlet in activities comparable to those of the trade unions in industry, and the status of the individual in relation to other members of the community is regarded as abnormal (compare the position of school-teachers). The lower Civil Servant is often lost. He knows what he is doing, but not why, and often he does not care why. He is not, as a rule, himself directly under strain as are the minority of higher Civil Servants. But his position helps to place the whole system under strain. It operates, like the building of the pyramids must be presumed to have operated, by an unconscionable multiplication of man-hours.

These are not insuperable difficulties, nor do they play into the hands of those who hold the theory of governmental original sin. I have suggested some remedies in Chapter Seven. Governments have taken some steps calculated to help the position.¹ But until such steps are effective the present position of the Civil Service must remain a limiting factor on government efficiency.

A second limiting factor interconnects with the first, but has separate origins. It resides in the general position of the public in relation to the government machine. I have alluded to this earlier. In their latest phases, the developments of British Government have brought it into ever closer dependence upon public good-will; it requires co-operation from individuals and from organisations; indeed, the old sharp line between government and governed tends to become blurred. But I doubt whether this is sufficiently appreciated. Some officials and even some members of Parliament seem to regret at times that members of the public are not automata, but betray individual differences and preferences and want to

¹ E.g. recently in making more formal provision for training new entrants to the Service, and in seeking to vitalise the working of departmental Establishments Divisions.

be told why they are asked to do this or that. By some members of the public the wider spread of government activity is quite clearly apprehended, but tends to be thought of as interference, or as at best a good work for which others are responsible. Attitudes such as these need to be broken down. On the government side a few steps have been taken, for instance, in the establishment of Public Relations departments and the new organisation of Information Services. The Stationery Office produces more literature in a palatable form than it used to do. This is only a beginning. More could be done to assist the members of the public to understand and take an interest in the activities and problems of government; and public relations should not be thought of as a subject for specialist sections of departments; all public servants should not only receive at the outset of their careers some education in what being a public servant ought to mean, but should throughout their careers be put in the way in acting, not merely as bureaucrats but as collaborators with the public.

But the other side is more important. With the best will in the world, modern government cannot act against apathy; and co-operation induced mainly by propaganda may evolve an efficient machine, but not a healthy one. The individual members of the public must meet the government half-way, and this not just for the government's advantage, but for their own advantage also. Government is not an intervention if part is taken in it. Arrangements that appear onerous when regarded as inventions of an alien body may not appear so when trouble is taken to understand the reasons for them. Alertness of this kind also reduces susceptibility to mischievous propaganda. There are probably more occasions open to ordinary individuals for taking a share in the business of government than most people appreciate. If full advantage were taken of them, the creation of still further opportunities would be encouraged. In order to take advantage of such opportunities it is necessary to find out what they are and what they mean. This is possible only if an intelligent and detailed interest is taken in the working of government. The better we understand it, the less we shall be bothered by it.

error, and we should not, one would hope, be unwilling to undertake deliberate experiment. Government is not an absolute: it must respond to changes in circumstances. It is not as old as man, and we are still only at the beginning of learning what good government is.

v

Since the main purpose of this book has been descriptive, I have purposely, in the present Chapter and throughout, indicated approaches to solutions to certain problems of British government rather than set out detailed proposals. Because of the brevity of the book, neither description nor suggestions are very full; and in any case, both represent only *one point of view*. *The next Chapter represents an attempt to make up for these deficiencies: it indicates where more information and other points of view may be found.*

CHAPTER IX
FURTHER READING

i

GOVERNMENT publications themselves are the best source for information on current questions about the working of government. The Stationery Office has branches in London, Manchester, Edinburgh, Cardiff and Belfast, where the full range of government publications may be seen, and they have special arrangements with certain booksellers in Birmingham, Cambridge, Exeter, Glasgow, Leeds, Liverpool, Newcastle, Northampton, Norwich, Oxford, Sheffield and Stoke-on-Trent; but any bookseller anywhere can obtain particular publications and they can all be ordered by post. Full verbatim reports of the Parliamentary Debates are issued in daily parts, and those of both Houses may also be obtained bound more conveniently in *Weekly Hansards*. It is particularly important to see the texts of Bills, as they are preceded by brief explanatory memoranda which state the purpose and effects of the proposed legislation. Bills, Acts, Orders and all reports and other papers are published by the Stationery Office, and the larger libraries take the Acts, binding them in annual volumes, and some of the more important reports. The largest libraries have the Statutory Rules and Orders bound in annual volumes also. Individual copies of all these papers are, however, quite inexpensive to buy, and few amongst even the closest students of British Government are likely to require to spend much money in a year on such documents. There need be no difficulty in keeping informed about these and other government publications, although it is unwise to rely upon even the most responsible newspapers for announcements. However, this is not necessary. The Stationery Office issues full monthly lists which can be consulted at their branches and at some booksellers or obtained

direct for a few pence.¹ Some libraries also take consolidated six-monthly and annual lists and also the consolidated lists of statutory rules and orders. In these lists of publications the reader will find adequate guides to put him on whatever road he wishes to follow. Short explanations are given in the monthly lists of the more important papers issued during the month, and the titles of other papers will generally reveal the nature of their contents.

For the purpose of following the political activities of a government it will be found that the most important documents are the Parliamentary Debates and "White Papers" (giving statements of policy), together with the texts of Bills, Acts and Orders. In order to follow trends in the machinery of government it is necessary, however, to utilise, in addition to these papers, various types of report, examples of some of which are given in the next section. On most matters of moment it will be found that there have been reports of bodies of enquiry, generally of Royal Commissions (appointed, as a rule, on matters of first-class importance), or of Select Committees (consisting of members of the House of Commons), or of Departmental Committees (appointed by Ministers and not, as in the case of Royal Commissions, by the Crown). There are also, however, reports of enquiries from other sources, for instance, from conferences (as in the case of the enquiry into the reform of the Second Chamber), or from Consultative Committees, or even from individuals (as in the case of the "Beveridge Report"). In the case of certain departments it is possible to follow their administrative activities closely in the pages of their own Annual Reports; such reports are issued, for instance, by the Ministry of Health and the Ministry of Education.

This is a very cursory account of the official material available. I have not mentioned, for instance, the statistical information that is put out in many forms, or various types of pamphlet in which important information is made available in more popular form. But the field is not difficult to explore.

Daily lists are also issued and these may be obtained in weekly batches.

ii

In order to see current tendencies in perspective, and in particular to consider questions of controversy, it is necessary to consult some of the older government papers that have become classics, and books that have been written at various times on different aspects of the political system and the machinery of government. The references suggested below follow roughly the order in which topics were dealt with in the chapters preceding this. They do not constitute a complete and comprehensive "bibliography", but they cover the main issues, and represent a fairly wide range of points of view.

On historical development, G. M. Trevelyan: *History of England* (1926) gives general background. D. W. Brogan: *The English People* (1943) analyses traditions. J. E. A. Joliffe: *The Constitutional History of Mediaeval Britain* (1937) and D. L. Keir: *The Constitutional History of Modern Britain* (1938) between them cover the development of the constitution up to 1485 and from 1485 to 1937 respectively. K. B. Smellie: *A Hundred Years of British Government* (1937) analyses social and political ideas and party and government structure in the century after 1832.

There are several general critical accounts of the present-day political system. I. Jennings: *The British Constitution* (1941) explains and defends the system on lines similar to those followed in the present book. A Liberal standpoint is represented by R. Muir: *How Britain is Governed* (1930), and a Conservative in Q. Hogg: *The Purpose of Parliament* (1947). Two "left-wing" books of different sorts are H. J. Laski: *Parliamentary Government in England* (1938) and H. R. G. Greaves: *The English Constitution* (1938).

On the constitution as such everyone should consult two nineteenth-century classics, W. Bagehot: *The English Constitution* (2nd Edition, 1872) and A. V. Dicey: *The Law of the Constitution* (1885). A critical estimate of Dicey will be found in I. Jennings: *The Law and the Constitution* (2nd Edition, 1938). For the legal side of the present-day constitution, E. C. S. Wade and G. G. Phillips: *Constitutional Law*

(3rd Edition, 1946) is by far the most useful book in relatively short compass, and the conventional side is treated excellently in I. Jennings: *Cabinet Government* (1936). For general reference on details there are three volumes of *Anson's Law and Custom of the Constitution*, the first, on Parliament, edited by M. L. Gwyer (1922), and the next two, on the Crown, edited by A. B. Keith (1935).

Those interested in the electoral system should consult J. F. S. Ross: *Parliamentary Representation* (1943), and R. B. McCallum and A. Readman: *The British General Election of 1945* (1947).

For the Cabinet, I. Jennings: *The British Constitution and Cabinet Government* should be consulted, together with A. B. Keith: *The British Cabinet System* (1939) and *The Constitution from Queen Victoria to George VIth* (1940), and Lord Hankey: *Diplomacy by Conference* (1946).

Two popular accounts of the procedure of the House of Commons are given in W. J. Brown: *Guide to Parliament* (2nd Edition, 1946) and S. Gordon: *Our Parliament* (1945). The most useful general study is I. Jennings: *Parliament* (1939). There is an invaluable account of the technicalities in G. Campion: *Introduction to the Procedure of the House of Commons* (2nd Edition, 1947). Anyone who wishes to go further should obtain a copy of the current *Standing Orders of the House of Commons* and refer to G. Campion's 14th Edition of Erksine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (1946)—generally known as "May's Parliamentary Practice". There have been some important committees of enquiry in this field, and their findings, and the views expressed before them, may be found in the papers of the *Select Committee on House of Commons Procedure* (387, 1934), the *Select Committee on Public Business* (161, 1931), and the three reports of the 1945-6 *Select Committee* (9-1, 1945; 58-1, 1946; 189-1, 1946).

On the House of Lords and the Crown, Jennings: *Cabinet Government* and the two books previously referred to by A. B. Keith are the most useful; then the report of the *Conference on the Reform of the Second Chamber* (Cmd. 9038, 1918), and the text of the *Parliament Act*, 1911, should be consulted on the

House of Lords; and there are interesting discussions of the position of the Crown in K. Martin: *The Magic of Monarchy* (1937) and H. J. Laski: *The Crisis and the Constitution* (1932).

There is less material in book form on most of the central aspects of the administrative machine, but much information and discussion will be found in the files of the *Political Quarterly* and *Public Administration*. (The latter has a useful consolidated index for the years 1923-42.) On the general question of the division of labour amongst departments, the report of the *Machinery of Government Committee* (Cmd. 9230, 1919) is still useful. There is general information in Jennings (*Cabinet Government*), Keith and Anson. The older departments were mostly covered in the 1920s in separate volumes of the "Whitehall Series", of which some are still worth consulting, in particular T. L. Heath: *The Treasury* (1927). Articles in the *Political Quarterly* in the early years of the 1939-45 war dealt with some of the new departments. There is no comprehensive up-to-date study of public corporations, but some of the material in W. Robson: *Public Enterprise* (1937), T. H. O'Brien: *British Experience in Public Ownership and Control* (1937), A. L. Gordon: *The Public Corporation in Great Britain* (1938), and J. D. Millett: *The Unemployment Assistance Board* (1940) is still useful; and there are more recent discussions in E. Davies: *National Enterprise* (1943), and *The Public Corporation*, three articles published in *The Times* on January 20th, 21st and 22nd, 1947, and since re-published in pamphlet form. For an account of the complex of bodies operating in a particular field, see T. S. Simey: *Principles of Social Administration* (1937). On advisory bodies, R. V. Vernon and N. Mansergh; *The Use of Advisory Bodies by British Government Departments* (1940) is, although not now up to date, the latest study. The Royal Commission is studied in Clotie and Robinson: *Royal Commissions of Enquiry* (1937). Questions of decentralisation have been dealt with most in books on local government, and an introduction to such questions will be found in H. Finer: *English Local Government* (1933), particularly Chapters 6 and 7. On the general position of the local authorities (see note to p. 106), Finer's book should be supplemented by E. L. Hasluck: *Local Government in England* (1936),

and the more recent accounts in W. E. Jackson: *Local Government in England and Wales* (1945), and H. Townshend-Rose and H. R. Page: *Local Government Up-to-date*, 1939-45 (1946) and *The Councillor's Handbook* (1946).

Material on the public service personnel is more plentiful on the Civil Service side than on the other sides. An introduction and a guide to the more important documents and books will be found in E. Gladden: *The Civil Service, its problems and its future* (1945), and W. H. Robson (ed.): *The British Civil Servant* (1937), H. Finer: *The British Civil Service* (1937) and H. E. Dale: *The Higher Civil Service of Great Britain* (1941) will be found useful. The personnel problems of public corporations have so far mainly been discussed in articles in periodicals, for instance in the *Economist* for October 12th, 1946, "Public or Private Service".

The literature on the legal powers of administrative departments is massive. A comprehensive view may, however, be obtained from two sources, the report on *Ministers' Powers* (Cmd. 4060, 1932) and C. K. Allen: *Law and Orders* (1945). These are usefully supplemented by C. T. Carr: *Concerning Administrative Law* (1941) and the texts of the *Statutory Orders (Special Provisions) Act*, 1945, the *Statutory Instruments Act*, 1946, and the *Crown Proceedings Bill*, 1947. An account of the system of Courts is to be found in R. M. Jackson: *The Machinery of Justice in England* (1940).

There have been no recent major studies of the general problems of co-ordination and control, but material will be found in several of the general books mentioned above, and particularly in those of Jennings and Keith, together with short recent discussions in *Some Proposals for Constitutional Reform* (1946) (a book written by a group under the chairmanship of C. Headlam), Sir John Anderson: *The Machinery of Government* (1945), K. C. Wheare: *The Machinery of Government* (1945), Sir Cliver Franks: *Central Planning and Control in War and Peace* (1947), and L. S. Amery: *Thoughts on the Constitution* (1947). Some of the problems of public relations are discussed in F. Williams: *Press, Parliament and People* (1946).

APPENDICES

A. THE PREROGATIVE

THE Prerogative was in origin the sum of the rights ascribed to the King as a feudal overlord. The expression is used today to refer to the Crown's discretionary authority, that is, to what the King or his servants can do without the authority of an Act of Parliament. This carries with it the conception of the legal irresponsibility of the Crown, but it is not a conception of an authority entirely outside the law but of one recognised by the Common Law (see below). From the practical point of view, moreover, the position is safeguarded by the corollary that Ministers have political responsibility for the Sovereign's actions. The mode of use of the Prerogative may, in any case, be regulated by Act of Parliament.

The essential point about the Prerogative is that it provides a convenient mechanism for various central activities in important aspects of government, for instance, the summoning of Parliament, the ratification of treaties, or appointments to offices. Various devices are used for such purposes: Orders in Council (see below on Privy Council); orders, commissions or warrants under the sign manual; proclamations, writs, letters patent, or other documents under the Great Seal. The curious reader will find these devices explained in *Anson's Law and Custom of the Constitution*, A. B. Keith's edition of the volume *The Crown*, Pt. I, page 62 ff. Constraint against misuse by Ministers of these devices is again, of course, conventional law, ultimately, political.

B. THE COMMON LAW

For the purpose of understanding British Government, the Common Law may be regarded adequately as being that of the Law of the land which is traditional and "judge-

made" as distinct from the part which is statutory and made in or under the authority of, Parliament. The explanation of the adjective "common" is that in mediaeval times the law administered by the King's superior courts was the "Common custom of the realm", as against the particular customs with which local jurisdictions were concerned. This conception of the Common Law as tradition would, if taken literally, involve the notion of that law as having had, so to speak, no beginning but as having existed from time immemorial; on this view judicial decision would not "make" law but simply "declare" it. It is more usual today, however, to conceive judicial decisions as "developing" the law, that is, as evolving further principles in the course of applying existing principles to new sets of facts. But continuity is an essential feature of the system; and in its working there are two further important elements of tradition besides that involved in the actual content of decision on particular cases. These are, first, the technique of finding the grounds for settling cases, and second, the conceptions of what legal rules ought to be in themselves and how they ought to be applied. These are, in particular, the traditions to which many lawyers have feared that "Ministerial tribunals" have not paid adequate tribute. All of these elements may, of course, be regulated by statute law; but the relations between the two forms of law are those of constant and unceasing interaction; traditional elements may be reduced to legislative form or altered by legislation, but, on the other hand, judicial glosses grow up around legislation.

C. DISSOLUTION

The formal process of Dissolution of Parliament is effected (unless a five-year period has elapsed) in a Royal Proclamation issued by the King on the advice of the Privy Council and under the Great Seal. This Proclamation discharges the existing Parliament from its duties and at the same time announces the desire of the Crown to have the advice of the people, and indicates that the Chancellor has, therefore, been ordered to issue writs for the calling of a new Parliament. This

in other words, is the mechanism whereby the ending of a Parliament is automatically followed by a General Election.

D. MANDATE

Mandate is one of the least exact constitutional concepts. It is sometimes conceived that at a General Election there is a particular "issue" or "issues" on which the parties take sides and that the party that is returned to power can then be spoken of as "having a mandate" from the electorate to follow out the line of action that it indicated in relation to the issue of issues at the Election. But this greatly over-simplifies the facts. Party programmes at Elections are formulated more exactly on some matters than on others. Issues are rarely capable of being expressed in clear terms in relation to party programmes. One party is liable to say that the issue is one thing, while the other party says that it is another thing. The impartial observer might easily conclude in one constituency that the issue was this and in another constituency that it was that. Hence it is always far from clear from the mere Election result just what any Government's mandate is. The Government will obviously try to make the maximum claims for it; the Opposition will equally obviously try to minimise it. And it is quite clear that in the course of the life of a Parliament there will be matters arising that were not the subject of debate during the Election. From this it might appear that there is no value in the concept at all. There is certainly little value in it in the form in which Oppositions very frequently appear to be appealing to it, that is, as the doctrine that a Government is entitled to do nothing for which there has not been specific electoral approval, the test for the existence for such approval depending upon whether the Opposition recognises it. The acceptance of any such doctrine would, as Oppositions are well aware, simply paralyse a Government. The very fact, however, that both Government and Opposition tend to talk in terms of mandate and that the public tends to think in such terms, makes it necessary to admit some place for it. I would suggest that its

real function is less sharply tied to a General Election than is commonly supposed. What the Government's mandate finally becomes is what the Government and Opposition between them succeed in convincing the public that it is. If the public is sceptical about the Opposition's attempts to minimise them, a Government will be more successful with its wider claims; and *vice versa*. This is further evidence of the continuous nature of the political process; there is no real gulf between pre-electoral and post-electoral politics. The concept of the mandate is just a particular way in which the limiting factor of public acceptance is recognised, taking its start from subjects of discussion during the Election, but not confined to some sort of immutable contract then entered into.

E. THE CABINET AND THE MINISTRY

The word "Cabinet" has one meaning only: it refers to a determinate group of servants of the Crown who are members of one or other of the Houses of Parliament, and are Privy Councillors (because the oath of the Privy Councillors makes them confidential advisers of the Crown), who meet for deliberation under the chairmanship of the Prime Minister, and who, as a team, form the responsible executive. The word "Ministry" is commonly used in two senses: sometimes it is used to mean the Cabinet, and sometimes it is used to mean both the Cabinet and other Ministers who are not members of the Cabinet. The second meaning is preferable. Sometimes, however, it is used in a third sense, to include Junior Ministers as well as Ministers, that is, as a compendious expression to refer to all the office-bearers of the Government. It is less misleading to use for this purpose the expression "The Administration". The word "Government" is also used, of course, to mean Cabinet, Ministry, Administration, or the majority party in the House of Commons on whose support the Prime Minister relies. It perhaps makes for clarity if it is confined to the last use.

The Cabinet formed by Mr. Attlee in 1945 contained the holders of the following offices

- (1) The Prime Minister (also First Lord of the Treasury and Minister of Defence).
- (2) Secretary of State for Foreign Affairs.
- (3) Chancellor of the Exchequer.
- (4) Lord President of the Council.
- (5) Lord Privy Seal.
- (6) Lord Chancellor.
- (7) President of the Board of Trade.
- (8) Minister of Labour and National Service.
- (9) Home Secretary.
- (10) Secretary of State for Dominion Affairs.
- (11) Secretary of State for India and Burma.
- (12) Secretary of State for the Colonies.
- (13) First Lord of the Admiralty.
- (14) Secretary of State for War.
- (15) Secretary of State for Air.
- (16) Secretary of State for Scotland.
- (17) Minister of Agriculture and Fisheries.
- (18) Minister of Fuel and Power.
- (19) Minister of Education.
- (20) Minister of Health.

In addition to the Ministers in the Cabinet there were the following Ministers who were not in the Cabinet:

- (21) Minister of Civil Aviation.
- (22) Chancellor of the Duchy of Lancaster.
- (23) Minister of Food.
- (24) Minister of Information.
- (25) The Attorney-General.
- (26) The Solicitor-General.
- (27) The Lord Advocate.
- (28) The Solicitor-General for Scotland.
- (29) Minister of State.
- (30) Minister of National Insurance.
- (31) Paymaster-General.
- (32) Postmaster-General.
- (33) Minister of Pensions.
- (34) Minister of Supply.

- (35) Minister of Town and Country Planning.
- (36) Minister of (War) Transport.
- (37) Minister of Works.

There were, in addition, some 36 further Junior Ministers.¹

Which Ministers are actually in the Cabinet at any time is simply a matter of convenience.

• It will be noticed that not every Minister is the head of an administrative department. In some such cases the offices are ancient, and with few or no duties attached, but it is advantageous to fill them because it is a way of obtaining the services of experienced men without tying them down to departmental duties. The duties of the Lord Privy Seal were abolished in 1884. (They related to the issue of money from the Exchequer and the affixing of the Great Seal to letters patent.) The Chancellor of the Duchy of Lancaster is nominally the representative of the Crown in the management of its lands in that Duchy and in the control of the courts of the County Palatinate of Lancaster; but this work is actually done, save for some formalities, entirely by the Vice-Chancellor and subordinate officials. Minister of State is a recent creation with no department attached and variable duties. A similar device, even more clearly detached, is the creation of a "Minister without Portfolio".

The functions of the other main Ministers who are not heads of the ordinary types of administrative departments may be indicated briefly as follows: The Lord Chancellor is the principal legal member of the Cabinet, and is himself a chief judge in the High Court of Justice and in the Court of Appeal, and Chairman of the Judicial Committee of the Privy Council.²

¹ In February 1948 the Cabinet contained 16 members only. There is now, for obvious reasons, no Secretary of State for India and Burma; the creation of a separate Ministry of Defence removed the three heads of the Armed Service Departments from the Cabinet; the Minister of Fuel and Power is lodged in the Cabinet. The number of Ministers outside the Cabinet has been increased by three only, however, as there is now no Minister of Information since the winding-up of the Ministry of Information.

The Commonwealth Relations Office also replaces the old Dominions Office.

² There is, however, a small "Lord High Chancellor's Department" which does some of the work in England that would be done elsewhere by a Ministry of Justice.

(See below on Courts.) He recommends the appointments to most judicial positions and presides in the House of Lords. The Attorney-General and Solicitor-General assist the Lord Chancellor in giving advice on legal matters to the Cabinet and represent the Crown in legal proceedings. The Lord Advocate and the Solicitor-General for Scotland perform similar functions for Scotland. The Lord President of the (Privy) Council has various general duties and the particular duty of co-ordinating scientific research.¹ The Paymaster-General is the official through whom all moneys for the Armed and Civil Services are passed. The office leaves the holder free for other duties.

F. THE ELECTORAL SYSTEM

So far as the study of the government of the country is concerned, the salient facts are these:

There are at present 640 seats, of which 12 are filled from University constituencies. The great majority of the constituencies return one member each, but 12 territorial constituencies return 2 each, as do the Oxford, the Cambridge and Combined English Universities constituencies, while the Scottish Universities constituency returns 3 members. Electors in the single-member territorial constituencies have one vote each, those in the two-member territorial constituencies have two; in both types of constituency election is by simple majority. In the University constituencies a form of proportional representation with one transferable vote is used. In General Elections voters with more than one kind of qualification may use two qualifications only, of which one must be territorial. Such voters may, however, vote at as many by-elections as they are qualified to vote in. Besides residence and the possession of a University degree, the only other form of electoral qualification is the occupation in a constituency of premises for the purposes of profession, business, or trade of an annual value of not less than £10. Under the 1928 Representation of the People Act the husband or wife of a person entitled to be

¹ See footnote (1) on p. 148.

registered as a "business voter" could also be so registered. This qualification was abolished in the 1945 Representation of the People Act. The business qualification is of considerable importance in a few, but only a few, constituencies, most notably in the City of London, where in 1945 there were 6,608 business electors out of a total electorate of 10,830. Eleven constituencies other than the City of London have over 1,000 business electors, four of them having between 2,000 and 3,000 while one (Glasgow Central) has 3,387, and one (Belfast, West) has 4,253.¹

G. THE OFFICERS OF THE HOUSE OF COMMONS

The M.P.s who are officials are the Speaker, the Deputy Speaker (and Chairman of Ways and Means), the Deputy Chairman of Ways and Means and the Chairman of Committees.

The other important officials are as follows: The Clerk of the House, who deals with the papers and accounts of the House and assists the Speaker and advises Members on questions of Order and the Proceedings of the House. The Clerk Assistants, who take minutes of proceedings and deal with notices of motions, questions and amendments. The Serjeant-at-Arms, who attends the Speaker with the Mace and arranges the policing of the House. The Speaker's Counsel, who advises the Speaker on legal questions, mainly with regard to Private Business. There are various members of staff of all kinds under these officials.

H. THE COURTS

We are not concerned here with criminal, but with civil jurisdiction. In England and Wales this is mainly a matter

¹ The position described above is now liable to be altered in two ways.

(1) Parliamentary Boundary Commissions appointed in 1945 finally reported late in 1947 in favour of reducing the number of territorial constituencies to 608. (2) The Government proposes to eliminate all forms of plural vote.

W.H., February, 1949

for the County Courts, the High Court of Justice, the Court of Appeal, which hears appeals from both the County Courts and the High Court, and the House of Lords, which hears appeals from the Court of Appeal. On questions of administrative law the important courts are the High Court, and the courts superior to it. Orders for review and injunctions are obtained from the High Court. Where statutes provide for the challenge of orders made under them, they generally lay down that the case is to be heard by a single judge of the High Court, from whom an appeal will lie to the Court of Appeal. The Crown Proceedings Act, 1947, provides for the first time for suits against the Crown in County Courts.

In Scotland the broad equivalent of the County Court is the Sheriff Court, and of the High Court, the Outer House of the Court of Session, while the Inner House of the Court of Session is an appeal court from which, in turn, appeal lies to the House of Lords.

On the Judicial Committee of the Privy Council, see below.

I. THE PRIVY COUNCIL

The Privy Council was formerly the council of the King's advisers. It is today, as such, a purely formal body through which many of the ancient mechanisms are operated which are really doing no more than giving effect to decisions of Parliament or of Ministers. Members of the Royal Family, Cabinet Ministers and certain high office-bearers, such as the Archbishops, are always Privy Councillors. Otherwise membership is granted as an honour in the same way as a knighthood or a peerage. Councillors so honoured are entitled to be addressed as the "Right Honourable". As there are over 300 members it is not surprising that most of the Privy Council's business is done in the presence of only about four or five.

The Order-in-Council is one of the main devices operated through the Council. These are legislative instruments approved by the King at a meeting of the Council. Orders-in-Council may be "statutory" or "prerogative". The former are really in the province of delegated legislation, as the power to

make rules by Order-in-Council is, in such cases, granted by Act of Parliament; they represent delegated powers of rule-making whose importance is emphasised by the employment of this traditional machinery of the King-in-Council. The prerogative Order-in-Council is quite different; it represents the direct use of the prerogative without formal relation to Parliament, and is, indeed, non-Parliamentary legislation. It sounds undemocratic in the extreme, but its employment is conventionally limited mainly to legislation for colonies which lack representative assemblies.

Certain other important work of substance is, however, performed as a matter of convenience through the Privy Council. The Judicial Committee of the Privy Council is the supreme court of appeal from certain courts in the Empire and from Ecclesiastical and other special courts in the United Kingdom. A particularly important duty of the Privy Council Office today is the supervision of various forms of research, and it has also dealt with economic co-ordination, policy questions relating to the B.B.C. and the work of the Central Office of Information.

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